

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR MEETING  
1123rd MEETING SESSION (15th of 2001)

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MONDAY

NOVEMBER 19, 2001

+ + + + +

The meeting was held at 1:30 p.m. in the Office  
of Zoning Hearing Room, 441 4th Street, N.W., Suite 200,  
Washington, D.C., Ms. Carol J. Mitten, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

CAROL J. MITTEN	Chairperson
ANTHONY J. HOOD	Vice Chairperson
PETER G. MAY	Commissioner (Architect of the Capitol)
JOHN G. PARSONS	COMMISSIONER

## ALSO PRESENT:

ANDREW ALTMAN	Office of Planning
ALBERTO BASTIDA	Secretary, Zoning Commission
ALAN BERGSTEIN	Office of Corp. Counsel
MAXINE BROWN-ROBERTS	Office of Planning
ARTHUR JACKSON	Office of Planning
ELLEN McCARTHY	Office of Planning
SHARON SANCHEZ	Office of Zoning
JENNIFER STEINGASSER	Office of Planning

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P-R-O-C-E-E-D-I-N-G-S

(1:35 p.m.)

CHAIRPERSON MITTEN: Good afternoon, ladies and gentlemen. This is the regular public meeting of the Zoning Commission of the District of Columbia for Monday, November 19, 2001. My name is Carol Mitten, and joining me this afternoon are Vice Chairman Anthony Hood and Commissioners Peter May and John Parsons.

Mr. Bastida, do we have any preliminary matters before we proceed today?

MR. BASTIDA: Madame Chairman, the staff has no preliminary matters today. Thank you.

CHAIRPERSON MITTEN: All right. One thing I'd like to just move up on the agenda if we could because I think it's something that we want to postpone, is under proposed action, Zoning Commission Case No. 96-03/8901, the Buzzard Point Overlay.

We were provided a report from the Office of Planning that we very much appreciated the content but didn't have sufficient time to digest. Also, I noticed under new cases filed at the back of our agenda, that we have received an application for a time extension for the Florida Rock PUD. I think it would be worthwhile to discuss the Florida Rock extension in the context of the overall Buzzard Point case.

Mr. Bastida, do you have a sense on the timing of

1 when the Florida Rock case would be ready for us to consider the  
2 time extension?

3 MR. BASTIDA: Yes, Madame Chairman. The  
4 Applicant has requested that it will not be taken until January  
5 because they are working with ANC and would like to have the ANC  
6 resolution regarding that matter prior to the Commission making  
7 a decision. So that means -- I'm sorry, I misphrased that.  
8 They would be working with them so they are certain that by  
9 January, by our regular scheduled meeting of January, 2002, a  
10 resolution would have taken place.

11 CHAIRPERSON MITTEN: So that you're confident  
12 that we could take up the issue at our January, 2002 regular  
13 public meeting?

14 MR. BASTIDA: Yes, based on the representation of  
15 the attorney for Florida Rock.

16 CHAIRPERSON MITTEN: All right. Let me ask Ms.  
17 McCarthy from the Office of Planning. First of all, do you  
18 think it would be advantageous for us to discuss Florida Rock  
19 and the overall overlay together, and if we were to do that,  
20 would there be any detriment to postponing consideration of the  
21 Buzzard Point overlay to January?

22 MS. MCCARTHY: What we were just discussing is  
23 we're recognizing that if the Applicant needs extra time to work  
24 with the ANC and there's the potential that they're coming back  
25 with proposed modifications or conditions, and they're not doing

1 that until the January meeting of the Commission, and our report  
2 would have to be in ten days before that, probably we're talking  
3 about February before we could submit a comment on the PUD  
4 extension.

5 I think that we have seen there would be some  
6 real advantages of doing the finalization of the Buzzard Point  
7 regs at the same time because it's an anomaly to try to figure  
8 out how to deal with the amenity since, unlike most PUD  
9 amenities, it couldn't be included within the confines of that  
10 PUD, but it does constitute a very important amenity and is very  
11 linked with that project. So, it probably would be cleaner for  
12 the Commission to know what they're doing with regard to the  
13 Florida Rock project and make a final decision at the same point  
14 in time on the Buzzard Point regs.

15 The other alternative is we could go ahead, adopt  
16 the regulation, say, in December when everybody has had a time  
17 to look at the final version. Then, depending on what happens  
18 with the PUD, simply amend the Buzzard Point regulations to  
19 include the provision dealing with the amenity.

20 So, we could work it either way, whatever is the  
21 Commission's pleasure.

22 CHAIRPERSON MITTEN: Okay. Just to add something  
23 else to the mix, I don't recall precisely, and maybe you can  
24 help me. Do we have a pending application for an extension of  
25 the Capitol Point PUD as well?

1 MS. McCARTHY: Yes, we do.

2 CHAIRPERSON MITTEN: And just to kind of consider  
3 all of these things at once, when do you think that's going to  
4 be coming forward?

5 MS. McCARTHY: The understanding that we have  
6 with the Applicant is that they would not go forward with an  
7 extension of the PUD as it now exists and that we would not  
8 support an extension of the PUD as it now exists. So, they  
9 wanted to do a redesign of that project.

10 They were hoping that they would be closer to  
11 finding a tenant by this point in time in order to do that in  
12 conjunction with the tenant, but we can't leave it, you know,  
13 for too much longer an extended time. So, we actually had  
14 discussed, we were in the process of setting up a meeting with  
15 the Applicant and talking about what sorts of design changes in  
16 more specific and what could be accommodated within that time  
17 frame, even if they don't have a tenant in hand.

18 CHAIRPERSON MITTEN: Do you think if we postponed  
19 consideration of the Buzzard Point overlay to February, we knew  
20 we were going to have the Florida Rock extension for our  
21 February meeting, do you think that having that as a target  
22 might get the Capitol Point folks, to give them a target to work  
23 towards so that we can look at all of this?

24 MS. McCARTHY: Yes, I think that would be a  
25 doable time frame.

1 CHAIRPERSON MITTEN: Okay. Then I would propose  
2 to the Commission that we would just defer consideration of the  
3 Buzzard Point case until our February public meeting. Is there  
4 any problem with that? Okay, thank you.

5 I'd also like to add something to the agenda  
6 under hearing action. Under hearing action, we have Zoning  
7 Commission Case No. 00-27M, and we'll talk about the substance  
8 of it when we get to it. We also have a proposed map amendment  
9 from the Office of Planning that has now been assigned Case No.  
10 01-33TA.

11 I would suggest that we take that up as letter B  
12 right after we talk about the rezoning case on Square 37, and  
13 that would re-letter each item underneath to be one higher, so  
14 that Zoning Commission Case No. 01-33TA would be B under hearing  
15 action.

16 All right, we'll turn to the minutes now, Mr.  
17 Bastida.

18 MR. BASTIDA: The staff has provided the minutes  
19 of the meeting of September 17, 2001 and request action by the  
20 Commission.

21 MR. HOOD: Madame Chair, may I just add on the  
22 September minutes, I don't recall you abstaining under item four  
23 action on the public meeting minutes of July 16.

24 CHAIRPERSON MITTEN: Right, I agree. It's very  
25 rare that I abstain, so I don't think I would do that over some



1 minutes. So, I think that just needs to be verified.

2 MR. HOOD: I think what it was, Madame Chair, I'm  
3 not sure. Were you present, or were you ill?

4 CHAIRPERSON MITTEN: No, I was present there.

5 MR. HOOD: Okay.

6 CHAIRPERSON MITTEN: I have some editorial  
7 changes that I'd like to propose, but one substantive thing is  
8 under proposed action on the 17th of September. We did agree by  
9 consensus to table proposed action on Case No. 01-04M, which is  
10 the human rights campaign PUD amendment for 1616 Rhode Island  
11 Avenue.

12 Then on the consent calendar, letter B. It's a  
13 similar case. In that case, the caption shouldn't include 01-  
14 04M because an extension of the original PUD, it wasn't an  
15 extension with the amendment. That was a modification. So, the  
16 case is 98-12M/88/32C.

17 With those changes, I would move approval of the  
18 minutes of September 17, 2001. Is there a second?

19 MR. PARSONS: Second.

20 CHAIRPERSON MITTEN: Any discussion? We have a  
21 motion and a second to approve the meeting minutes of September  
22 17, 2001. All those in favor, please say aye.

23 (Chorus of ayes.)

24 CHAIRPERSON MITTEN: Those opposed, please say  
25 no.

1 (No response.)

2 CHAIRPERSON MITTEN: Mr. Bastida?

3 MR. BASTIDA: The staff will record the vote four  
4 to zero, Ms. Mitten moving, Mr. Parsons second, and Mr. May and  
5 Mr. Hood voting on the affirmative. The staff doesn't have a  
6 proxy from Mr. Hannahan.

7 CHAIRPERSON MITTEN: Thank you. And next, we  
8 have the minutes of the October 15, 2001 public meeting.

9 MR. HOOD: Madame Chair, in these minutes on  
10 October 15, I had mentioned a set-up of a meeting between the  
11 DOES and the local business office, the Office of Planning and  
12 Office of Zoning and three Council members. There's no mention  
13 of that anywhere in the minutes. I would like for that to be  
14 added to the minutes.

15 CHAIRPERSON MITTEN: Very good. Any other  
16 changes or modifications?

17 MR. PARSONS: I move approval.

18 MR. MAY: Second.

19 CHAIRPERSON MITTEN: We have a motion and a  
20 second to approve the minutes of our October 15, 2001 with the  
21 addition that Mr. Hood requested. All those in favor, please  
22 say aye.

23 (Chorus of ayes.)

24 CHAIRPERSON MITTEN:

25 Those opposed, please say no.

1 (No response.)

2 CHAIRPERSON MITTEN: Mr. Bastida?

3 MR. BASTIDA: Madame Chairman, the staff will  
4 record the vote four to zero, Mr. Parsons moving and Mr. May  
5 second, and Mr. Hood and Ms. Mitten voting on the affirmative.  
6 Mr. Hannahan not present, no voting.

7 CHAIRPERSON MITTEN: Thank you. Now we'll turn  
8 to the status report from the Office of Planning.

9 MS. MCCARTHY: Good afternoon, Madame Chair and  
10 Commissioners. I think that everything is pretty self-  
11 explanatory in the report.

12 As you can see, in addition to the five issues  
13 that we have before you today for set-down, there are two --  
14 well, there are four, I'm sorry, that are anticipated for next  
15 month, including the antenna regulations, a possible PUD at St.  
16 Elizabeth's, the Gateway Square, and some administrative changes  
17 to the Zoning Regulations. Oh, I'm sorry, and depending on the  
18 outcome of our discussions with the D.C. Building Industry  
19 Association, a possible modification of the regulations with  
20 regard to PUD modifications.

21 CHAIRPERSON MITTEN: Okay. It sounds like we're  
22 going to be busy.

23 MS. MCCARTHY: Oh, I'm sorry, and I left out  
24 PDR's for historic churches and synagogues. We've completed  
25 very extensive research on that, and the first draft of a

1 proposal. So, I think we can definitely bring that to the  
2 Commission next December as well.

3 CHAIRPERSON MITTEN: Okay. Let me just make a  
4 request on behalf of the Commission. It's not new, but the  
5 busier we get, the more difficult it is to digest material that  
6 comes in at the last minute. So, to the extent that you could  
7 insure that we don't receive materials at the last minute, we'd  
8 appreciate it.

9 MS. McCARTHY: We will try our best.

10 CHAIRPERSON MITTEN: Thank you. Any questions  
11 for the Office of Planning?

12 Hearing action. We'll move to the first case,  
13 which is Zoning Commission Case No. 00-27M, which is the zoning  
14 consistency case for Square 37. Here again, we've received a  
15 lot of correspondence at the last minute. I'll turn to the  
16 Office of Planning to get us started.

17 MS. McCARTHY: Okay. This case was a petition  
18 that asked for the rezoning of the south part of Square 37. I  
19 think I'll have Mr. Jackson go through the specific proposal for  
20 the rezoning, and then maybe some observations about some  
21 correspondence that's come in with regard to the proposal.

22 CHAIRPERSON MITTEN: Thank you.

23 MR. JACKSON: Madame Chair, members of the  
24 Commission, this submission is based on a petition received in  
25 the Office of Zoning on behalf of James Pedas, corner of Lot

1 855, requesting the Zoning Commission to initiate steps to  
2 change the zoning of Lots 810, 811, 831, 836, 837, and 855 on  
3 Square 37 from R-1-B to a classification more consistent with  
4 the generalized land use plan of the Comprehensive Plan.

5 The properties are surrounded by a number of  
6 zoning districts. If you turn in the staff report to page two,  
7 this runs through a litany of existing zoning surrounding this  
8 property, and some end-fill zoning. As you'll notice, the range  
9 of zoning options in the vicinity ranges from R-5-B all the way  
10 to CR. I think it would be useful to also turn to the  
11 Attachment 1, which is a map of the area, which describes  
12 basically the zoning that surrounds the property.

13 I think it's important to note that the subject  
14 property is zoned R-5-B and is surrounded on two sides by  
15 residential zoning districts R-5-D and R-5-D. On the north and  
16 east are two primarily residential districts, which are C-2-C  
17 and CR. There is also a C-2-C to the southwest along  
18 Pennsylvania Avenue.

19 The Office of Planning looked at the  
20 Comprehensive Plan, which allows for a mix of zoning in this  
21 area. The long-range plan calls for a combination of high  
22 density residential and medium density commercial. This allows  
23 for a mix of land uses on the site. However, the current Zoning  
24 regulations do not include any provisions that actually require  
25 a mix of uses.

1           That is to say, you can put in place zoning  
2 districts that allow a range of uses, but there's no requirement  
3 that there actually a mix of uses on the site. It could be all  
4 commercial or it could be all residential and so forth.

5           Based on our analysis of the existing conditions,  
6 the Comprehensive Plan, and some of the long-range goals that  
7 were identified in the earlier West End study, which actually  
8 was the basis for most of the rezonings in the area, we see that  
9 several things have not occurred with regard to land use changes  
10 within the area embodied by Square 37.

11           In the original West End plan, the goal was to  
12 guide development in the West End such that it became  
13 predominantly residential. The new development would be  
14 primarily medium to high density residential structures, but  
15 include retail and office facilities to serve the immediate area  
16 and to retain employment opportunities.

17           Again, this plan is based from 1994, but I think  
18 it was the basis for the rezoning changes that have occurred  
19 since that time. Oh, 1974, I'm sorry.

20           One of the goals in that plan was to provide high  
21 density residential, but that the first two floors would be  
22 neighborhood serving commercial and employment opportunities.  
23 As of today, that pattern has not been presented. We do not  
24 feel that going with one of the higher commercial zones will  
25 actually result -- could be anticipated to result in the type of

1 residential development that we feel is what was intended for  
2 the area based on these long range plans.

3 So, based on our analysis, we looked at  
4 -- although we support consistency, we think that strict  
5 consistency could potentially result in excess of commercial  
6 office development that would be inconsistent with the community  
7 goals for the area. These goals include, but are not limited  
8 to, supported developments that provide long-term residential  
9 opportunities, encouragement of the provision of more small  
10 scale neighborhood serving commercial enterprises, limits on  
11 office development, and encouraging future construction that is  
12 sensitive in scale and matching to the existing structures in  
13 this close urban setting.

14 Therefore, because of this, OP is recommending  
15 modifications to existing zoning categories. The principal goal  
16 of our efforts would be that this area were to be primarily  
17 residential development. That is, the southern half of Square  
18 37 would be, when it's redeveloped, would be redeveloped as  
19 primarily residential. However, there would be accessory used  
20 on site which would consist of community service and retail,  
21 with the option for some office.

22 The goal, as I said, in the earlier study from  
23 1970 was to provide two floors of neighborhood serving retail  
24 and office with residential above with the calculations we've  
25 put in the plan. This would result in essentially the same type

1 of development.

2 So, as such, our proposed amendments would  
3 establish a new mixed use development model that would allow  
4 medium to high density intensity residential development from  
5 three to 4.5 FAR, and up to 5.5 with the PUD, allow low to  
6 moderate density commercial development, up to 1.5 with no PUD  
7 increase. It would generally limit the types and size of  
8 commercial developments to community serving retail service and  
9 institutional, which is library, and accessory office uses, and  
10 limit office uses as a principal use, and require a minimum of  
11 0.5 FAR. On the first floor, it would be reserved for community  
12 serving retail.

13 We think some of the weaknesses of the current  
14 zoning regulations is that there would be no requirement to  
15 provide -- there's no requirement for mixed uses, and beyond  
16 that, no requirement to provide neighborhood serving retail. We  
17 think that is a problem with the zoning regulations, and we see  
18 this as an option for that to be employed not only in this  
19 community but throughout the city.

20 Now, we are continuing with other studies that  
21 are looking at issues related to this application, and we think  
22 that our recommendations today are contingent on the results of  
23 those studies. Principal of those is looking at the issues that  
24 are raised by the community with regard to development in the  
25 area, of the impact of the current plan and anticipated



1 development in the area on the neighborhood streets. Also  
2 looking at development controls to address some of the other  
3 community concerns about development along L Street and how it  
4 would impact adjacent development, and seeing what other tech  
5 changes will be required to make these amendments function  
6 effectively in our current zoning system.

7 So, based on those proposals, we recommend  
8 setting down the proposed proposal for R-5-D pr R-5-E with ANC  
9 and that the Commission also set down a recommendation to amend  
10 Chapters 3 and 13 of the Zoning Regulations accordingly.

11 CHAIRPERSON MITTEN: I know that you are also  
12 going to speak to some of the correspondence that we've gotten  
13 to, but I'd like to direct your attention to one first, which is  
14 in order for us to take action on this today, we have to waive  
15 our rules to accept your report. There are concerns that have  
16 been raised about that, which I hope you have the letter from  
17 Mrs. Kahlow. Could you address those before we take up the  
18 issue of whether we'll waive our rules?

19 MS. MCCARTHY: Let me address her process  
20 concerns first, which were basically that the report came out  
21 too late for the community to respond to that. I think our  
22 feeling is we have been meeting with the Foggy Bottom and West  
23 End community off and on for basically a year. We've had  
24 extensive discussions with them about that, as was witnessed by  
25 the letter from Michael Thomas that we included in our

1 submission. Our feeling was that what we submitted was very  
2 responsive to the concerns that that community had raised.

3 With regard to her one point about all of us  
4 agreeing that a traffic impact analysis is important and asking  
5 for the Zoning Commission to wait for the completion of the DPW  
6 study before considering the map amendment case, this is simply  
7 set down. What we are setting down is basically the lowest  
8 density that could be considered to be consistent with the  
9 Comprehensive Plan.

10 So, our concern, which was not agreed with by  
11 either the ANC or Ms. Kahlow, is that right now, you cannot deny  
12 the fact that the zoning on that site is inconsistent with the  
13 Comprehensive Plan. What we are trying to do is to make it  
14 consistent, and we have simply put something forward which  
15 begins that process long before this would come to a hearing.

16 We expect to have the DPW study. We've already  
17 met with DPW's consultant. They're not doing it in-house.  
18 They're going to contract it out. We've gone over with them and  
19 agreed upon a scope of work. So, I don't think that it is worth  
20 it for the Commission to wait for that study in order to decide  
21 on set-down.

22 CHAIRPERSON MITTEN: Okay. The other thing I  
23 noted in addition to the things that you've articulated is, in  
24 terms of prejudicing any party, the only parties that would be  
25 identified at this point would be the ANC. The ANC is on record

1 with their resolution that they oppose a change in zoning, which  
2 is certainly a position. I understand the biggest charge that  
3 this Commission has is to not be inconsistent with the  
4 Comprehensive Plan.

5 So, if there are no objections, I would waive our  
6 rules to accept the Office of Planning report.

7 MR. HOOD: No objection.

8 CHAIRPERSON MITTEN: All right. Now, Mr.  
9 Jackson, could you address some of the other pieces of  
10 correspondence that we've gotten, particularly from the  
11 representatives of the owners in Square 37?

12 MS. MCCARTHY: All right. Let me just address  
13 those briefly. The three points that I wanted to make with  
14 regard to the letter from the Applicant's counsel or the  
15 Petitioner's counsel, first of all, was their objection that we  
16 had named R-5-D and R-5-E as the base zoning. If you look at  
17 the petition that the Applicant submitted, the October 10 letter  
18 that was in your package, on page two, the Applicant said, on  
19 behalf of the owner of Lot 855, we're writing to request the  
20 Zoning Commission initiate steps to change the zoning applied  
21 for, and then mentioned more appropriate zone classifications,  
22 such as CR, C-2-C, or possibly R-5-E.

23 So, the classification we chose is one that was  
24 specifically mentioned by the Petitioner except that R-5-E would  
25 not have permitted any commercial development. So, we've gone

1 ahead with R-5-E, but we thought it was important that there be  
2 some commercial possibility, particularly neighborhood serving  
3 retail because that area is short on neighborhood serving  
4 retail.

5 With regard to the Petitioner's observation that  
6 we had indicated moderate density in our report when, in fact,  
7 the classification was medium density, that was true. It was an  
8 oversight in terms of the report, but you'll notice in what  
9 we've recommended that we're recommending 1.5 non-residential  
10 commercial FAR be permitted, which is the commercial component  
11 or the non-residential component of C-2-A, which is officially  
12 listed in the zoning regulations as a medium density commercial  
13 zone.

14 So, while we didn't have the actual nomenclature  
15 right, we have incorporated a commercial level there which is  
16 consonant with what the Comprehensive Plan calls for, which is  
17 medium density commercial. Certainly the R-5-D and R-5-E are in  
18 consonance with the high density residential designation, which  
19 is also designated on this for the generalized land use map.

20 Lastly, the Petitioner had expressed concern that  
21 this was applicable only to on square but, in fact, that's one  
22 reason why we have devised this as a subset of Chapter 13, the  
23 neighborhood commercial district overlay, because it seemed to  
24 us that, in fact, this was a major problem with a lot of the  
25 zoning in the city. Where we were trying to encourage mixed use

1 along high density corridors, you can either have high density  
2 residential, but in which case the only commercial you can have  
3 there are accessory uses, or you can have low density  
4 commercial, which does permit residential but which doesn't  
5 require residential. Since I think we've recognized that a  
6 general goal of what we're trying to accomplish, especially on  
7 neighborhood commercial areas along our major corridors, is to  
8 have high density residential right on the corridor, but to not  
9 preclude commercial as a result of that high density commercial.

10 This seemed like the best way to accomplish that.

11 So, what we are anticipating is that while this  
12 may be the first site on which this neighborhood commercial  
13 overlay is mapped, it would be just like the neighborhood  
14 commercial overlays, just like the tree and slope overlays,  
15 something which is available in the zoning regulations to be  
16 mapped in other areas as it applies.

17 We had sort a similar sort of circumstance when  
18 we were deciding what to advertise for the BP overlay. There  
19 was one property owner who wanted something else advertised as  
20 an alternative. Would you find it problematic in any way,  
21 because I suspect we're going to end up talking about it in the  
22 context of this case, advertising these alternative zoning  
23 classifications as alternatives? Then there wouldn't have to be  
24 at some subsequent point, depending on the direction we took,  
25 some re-advertisement.

1                   It sort of opens it up for the full range of  
2 discussion. I don't think anyone is going to misconstrue that  
3 the Office of Planning is recommending those, but it would just  
4 be advertised as an alternative. I'm speaking specifically of  
5 CR or C-2-C. Is that a way that we could handle it?

6                   MS. McCARTHY: We felt strongly that the  
7 densities in CR and the fact that residential and CR could be  
8 considered to be hotel made it an unsuitable zone for this site,  
9 particularly given the fairly low density residential just  
10 across L Street, which is why we didn't recommend that or the  
11 other C zones. If they Commission wanted to do that so it had  
12 the benefit of a full range of discussion, we wouldn't recommend  
13 that zone, but --

14                  CHAIRPERSON MITTEN: I understand.

15                  MS. McCARTHY: It's up to the Commission.

16                  CHAIRPERSON MITTEN: I understand. And I also  
17 appreciate the fact that the members of the Commission haven't  
18 had an extensive amount of time to read the submissions that  
19 have come in today. We have a proposal from the Office of  
20 Planning as it relates to rezoning properties in Square 37 to  
21 either R-5-D or R-5-E within this new high density residential  
22 neighborhood commercial overlay, or we could broaden that and  
23 advertise other zones in the alternative. Can I get some  
24 discussion on your feelings about that?

25                  MR. HOOD: Madame Chair, I would take the latter

1 and think that we would advertise it with the alternatives.  
2 Also, in looking at this letter that was just given to us, we're  
3 also being asked something else. Were we going to address that,  
4 too?

5 CHAIRPERSON MITTEN: Why don't you tell me what  
6 it is?

7 MR. HOOD: Just read a quick sentence. It says,  
8 we are interested in G-2-C, CR rezoning, the petition to be  
9 heard as one case, and that the Commission consider the other  
10 case separately

11 CHAIRPERSON MITTEN: Well, I mean, there is a  
12 second case, which is why I introduced a second concept into the  
13 mix, which is we would have to make a text amendment to create  
14 this new high density residential neighborhood commercial  
15 overlay. So, that will be separate because it's not all about  
16 Square 37. So, it will be two cases.

17 I was speaking specifically, and I'm glad you  
18 reminded me of that, but I think we're going to pick that up as  
19 the next item, about whether or not we want to set down the  
20 language which, if we decide to set down the Office of  
21 Planning's recommendation in the first case, I would think it  
22 would be a shoe-in for the second one. I guess right now, it's  
23 just a question of what scope would you like the rezoning case  
24 on Square 37 to have. So, what I understood you to say is your  
25 --

1 MR. HOOD: Yes, I'm fine with the alternative.

2 CHAIRPERSON MITTEN: You're fine with it.

3 MR. HOOD: Somewhat like over there with  
4 Buzzard's Point.

5 CHAIRPERSON MITTEN: All right.

6 MR. PARSONS: I'm not clear.

7 CHAIRPERSON MITTEN: Okay.

8 MR. PARSONS: Just R-5 D and E, is that what he  
9 means?

10 CHAIRPERSON MITTEN: No. In addition to those  
11 two alternatives that are being recommended by the Office of  
12 Planning, it would include CR and C-2-C.

13 MR. PARSONS: But what were you reading from?

14 MR. HOOD: I'm reading from a letter dated  
15 November 19, 2001. This was actually just handed to us. Let me  
16 show you. You can have my copy if you didn't get one.

17 CHAIRPERSON MITTEN: It's from Holland and  
18 Knight.

19 MR. PARSONS: Which piece of paper do I look at,  
20 that one? I'm not sure I can even deal with this case until I  
21 deal with what is neighborhood commercial. I don't understand  
22 how we're going to set something down with an NC after it when  
23 there is no NC.

24 CHAIRPERSON MITTEN: Okay.

25 MR. PARSONS: I don't get it. I need more help



1 here.

2 CHAIRPERSON MITTEN: Okay, then let's do this.

3 MR. PARSONS: I don't want to set this down is  
4 where I'm coming from.

5 CHAIRPERSON MITTEN: You don't want to set the --

6 MR. PARSONS: This specific case down.

7 CHAIRPERSON MITTEN: Okay.

8 MR. PARSONS: Until we've got something called an  
9 NC zone.

10 CHAIRPERSON MITTEN: Okay, okay. Let's just for  
11 the moment just set aside the first item, which is the case on  
12 Square 37 specifically. Can we turn, then, instead to the next  
13 item, which is Case No. 01-33TA. Perhaps I made an error in  
14 that I should have put that first instead of second.

15 This would be the text amendment to create the  
16 high density residential neighborhood commercial overlay  
17 district, so maybe lead us through that, and then we'll go back  
18 to the discussion about Square 37 specifically.

19 MR. JACKSON: All right, Madame Chair. The  
20 neighborhood commercial overlay, if you'll turn back to the  
21 attachments to the case for 0027. In the back of that is the  
22 neighborhood commercial overlay regulations, second edition.  
23 So, there is an existing neighborhood commercial overlay  
24 district, or group of districts.

25 These districts have certain characteristics in

1 common, but you'll note that when you get to page 13-5, you see  
2 that there are particular -- these districts are customized to  
3 provide certain support to different areas of the city. For  
4 instance, there's the Cleveland Park neighborhood commercial  
5 overlay district, the Woodley Park commercial overlay district,  
6 and so forth.

7 These districts were all under the heading of  
8 neighborhood commercial overlay districts because there are  
9 number of characteristics they have in common. The principal  
10 characteristic they have in common is that there are a number of  
11 uses that they allow and encourage in these areas, which are  
12 designated under 1302.

13 This is what we're looking at as neighborhood  
14 serving commercial that is designated retail and service  
15 establishments that will be located on the ground floor of any  
16 future development. They're actually listed in the zoning  
17 regulations already. So, our proposal is really to create  
18 another version of this existing zoning district. The new  
19 version is something that could be used in a residential  
20 district, whereas these can only operate in commercial. That's  
21 where the change needs to be made.

22 Again, the goal is to create an area where we  
23 know that the principle uses will be residential, high density  
24 residential users. In support of that, in and throughout the  
25 community, we also want there to be certain types of retail and

1 service uses located in the first two floors. For the most  
2 part, the uses that we're talking about are listed under 1302.

3 Now, beyond that, we also see that there are some  
4 other uses that we would also like to encourage, and a few we'd  
5 like to discourage. So, under our proposed amendments, we  
6 identify what those uses are. Quickly I'll walk through them.

7 The first amendment, in bold on Exhibit 1, is  
8 simply -- oh, sorry -- 13,350.7 would be in addition to the R-5-  
9 D in our R-5-D regulations that would allow commercial, that is,  
10 neighborhood serving uses, in high residential districts. As  
11 currently is the case, these zoning districts do not allow  
12 commercial uses as principal uses.

13 So first, we have to put in place a provision  
14 that allows for the creation of these overlays within R-5-D and  
15 R-5-E. This is simply what this says.

16 Then, under the neighborhood commercial overlay  
17 district, we list, again, under 1302.2 the list of uses that are  
18 allowed. In Exhibit 2, we also list the uses that were allowed  
19 as per 701.1 and 701.4.

20 Right now, there is no provision in there that  
21 deals with commercial neighborhood overlays in high residential  
22 districts. So, that's what 1310 on the next page does. This  
23 will be a new section that creates the high density residential  
24 neighborhood overlay district, which could be applied anywhere  
25 in the city. Note that under our description, under 1310.1, we

1 describe how this will be applied to an area that coincides with  
2 the subject properties and other areas as designated in the  
3 future, zone R-5-D and R-5-E.

4 We also outline in 1310.2 what the additional  
5 purposes are beyond what already exists in the HRNC overlay  
6 district. Those are -- they coincide again with what we're  
7 trying to achieve in this area, to allow high density in  
8 residential development in the interest of economic development;  
9 to allow low to moderate intensity neighborhood serving  
10 commercial uses in conjunction with other development that would  
11 support not only the referenced development but the local  
12 community; limit the size of applicable commercial development;  
13 and require that a minimum amount of neighborhood serving  
14 development be provided on the ground floor and upper floors.

15 So, this is what we would also like to accomplish  
16 beyond the existing goals of the neighborhood commercial overlay  
17 district.

18 Now, for the purpose of the overlay, we indicate  
19 that this would be the first place it would be located; however,  
20 there will be other locations designated in the future. For the  
21 purposes of allowable uses, we don't really see that this  
22 overlay is necessary for the development of service station or  
23 off-premise alcoholic beverage sales. So, those are two uses  
24 that are permitted, would normally be permitted, that we are  
25 exempting from this regulation.

1           Then we go into what types of development is the  
2           development to be affected. It would be any new development in  
3           this area would have to include, on either 1.0 FAR or 1.5 FAR of  
4           neighborhood serving commercial. They have the option to  
5           provide that much.

6           However, a minimum of 0.5 would have to be  
7           neighborhood serving commercial on the first floor. Again, this  
8           mirrors what we have stipulated in the past. This would affect  
9           new development and renovations of existing buildings that  
10          exceed 100 of the assessed value. This is similar to what's in  
11          the DD regulations.

12          It also states that there will be a maximum for  
13          each development under PUD. Now, as an alternative, we are also  
14          including the provision, that provision that would allow for  
15          office use. We're providing it as an alternative. The first  
16          precedence would be no office; however, we are providing the  
17          alternative wherein office could be 1.0 FAR of the total 1.5 FAR  
18          that's allowed.

19          So, this is what we create in terms of this  
20          overlay district. Again, it's not limited just to the subject  
21          property. It could be located around the city. This could  
22          address the need that's outstanding.

23                 CHAIRPERSON MITTEN:     Okay, thank you. Now,  
24                 questions?

25                 MR. PARSONS:     I guess I think that this case

1 should be heard first. I just don't see how we can apply  
2 something that doesn't exist.

3 CHAIRPERSON MITTEN: Okay.

4 MR. PARSONS: But I'm surprised at the permitted  
5 uses that are listed here. You've taken them from the other NC  
6 overlay districts in commercial zones, but why auction house,  
7 department store, furniture store, theater? I mean, do these  
8 kinds of larger -- and office, I would add, but that's a  
9 separate subject. Why stores of this magnitude, or regional  
10 scale, I would call it, belong here in residential zones?

11 MR. JACKSON: In-house we did have some  
12 discussion as to whether or not larger uses such as department  
13 store or even dry good store, which can grow to be very large,  
14 would be allowed in this area. You must remember that the FAR  
15 that's allowed, it's only 1.5 FAR total. We think it's probably  
16 unlikely that in a location such as this, that a department  
17 store would want to build a large presence in this area with  
18 just 2.0 FAR. They don't have enough FAR to make this  
19 economically feasible, in our opinion.

20 MR. PARSONS: Well, and I don't think we ought to  
21 invite them in or put the fear in the public's eye that this is  
22 possible.

23 MR. JACKSON: We would support -- we're still  
24 looking at this, obviously, and if the Commission should think  
25 that such things as the dry goods store, department store,

1 should also be a use that's not allowed under this overlay, we  
2 could certainly make that change.

3 MR. PARSONS: And then why are you recommending  
4 office? I mean, that's seems illogical to me.

5 MR. JACKSON: There has been some discussion  
6 about how this can serve as a transition area in that we are  
7 allowing a minimum amount of office along with commercial retail  
8 and service. There was some concern that some of the 1.5 FAR --  
9 well, even the discussions in the 1974 report, expressed concern  
10 that if you have 2 FAR of space available for commercial uses,  
11 it's unlikely that you would have a significant retail presence  
12 on the second floor such that it seemed practical to consider  
13 the option to allow some office to occupy at least the second  
14 floor areas of the commercial space.

15 However, we are offering that as an alternative  
16 and that we continue to analyze that circumstance.

17 MR. PARSONS: Well, I guess I would object to  
18 that. If the FAR is too high, then we shouldn't fill it with  
19 commercial, but we're not having a hearing today, so I'd better  
20 cool it.

21 MR. ALTMAN: Commissioner Parsons --

22 CHAIRPERSON MITTEN: It's always good to put them  
23 on notice of your concerns.

24 MR. ALTMAN: I'll just make one statement, not to  
25 stop the hearing on this, but one point about that is depending

1 on where you map this, in particular, if you look at areas that  
2 are adjacent to the downtown where you have higher density  
3 residential, we looked at it as in the alternative, at least to  
4 further explore, was is you're having a higher density  
5 residential, that some amount of commercial might be appropriate  
6 for a building.

7 If you think vertically, it could be ground floor  
8 retail, a floral office, and the remainder being housing, in an  
9 area close to downtown, that may be something that you may want  
10 to encourage.

11 CHAIRPERSON MITTEN: I also have a concern about  
12 the inclusion of office because I could imagine a scenario, and  
13 particularly -- and it's also vis-a-vis the requirement as  
14 opposed to the option. Maybe we want to have a certain amount  
15 that's required and then optional up to another level. I could  
16 envision a scenario where particularly since it's difficult to  
17 lease upper floor space to retailers, that you would get office  
18 tenants in there. Then they would be there for some period of  
19 time, and then they would want to expand.

20 Then they would go to the BZA and try and make a  
21 case for a use variance. I would really not want to be  
22 promoting something that's going to cause that sort of problem  
23 down the road because it's exactly not what we intend. I guess  
24 I'd just like the stem that sort of thing before it starts.

25 So, in terms of setting language down, I guess I



1 would prefer your first alternative, which does not include the  
2 option for office.

3 MR. PARSONS: I would agree. Before you know it,  
4 we'll have a linkage program.

5 CHAIRPERSON MITTEN: Right.

6 MR. JACKSON: Madame Chairman, I just wanted to  
7 point out something I didn't mention before. If you go back to  
8 Section 350.7, we also indicate that the ratio, the total ratio  
9 of residential floor area in the structure and the area devoted  
10 to non-residential uses have to remain at least two to one, so  
11 that to some extent, once you have created your residential  
12 envelope, you can't expand the area for non-residential uses.

13 CHAIRPERSON MITTEN: Right, but that's just  
14 another aspect of what people would seek a variance from. I  
15 mean, what I saw that as protecting was if someone was not  
16 building the full density of the residential that would be  
17 permitted, that it wouldn't be a predominantly commercial  
18 project.

19 MS. McCARTHY: That's true.

20 CHAIRPERSON MITTEN: I don't see that as  
21 protecting the concern that I have.

22 The other thing that I just wanted to have you  
23 think about to the extent that we set it down and it comes  
24 forward, is we don't have specific parking requirements for  
25 commercial uses in residential zones because they're generally

1 not permitted. So, to the extent that -- well, you need to think  
2 about parking, I guess, and particularly if you really want  
3 these uses to serve the community.

4 Maybe what we need to do is significantly narrow  
5 the kinds of uses that are permitted so that really, we're not  
6 going to be creating traffic problems. Ideally, we are going to  
7 be encouraging pedestrian traffic because it would be drawing  
8 people from the neighborhood. So, I guess I just urge you to  
9 think about parking and the implications of that.

10 Any other questions on the proposal that is Case  
11 No. 01-33TA? Any more questions?

12 Well, I would entertain a motion to set down Case  
13 No. 01-33TA using the first alternative language for 1310.2,  
14 which does not include the option for office.

15 MR. PARSONS: Second.

16 CHAIRPERSON MITTEN: Any further discussion? We  
17 have a motion and a second to set down Zoning Commission Case  
18 No. 01-33TA.

19 MR. HOOD: Just some discussion, Madame Chair.  
20 So now, we're going to use the first, and we're going to take  
21 office out of the equation. We're going to advertise the  
22 office?

23 CHAIRPERSON MITTEN: Yes.

24 MR. HOOD: Okay. I'm ready to vote.

25 CHAIRPERSON MITTEN: All right. All those in

1 favor, please say aye.

2 (Chorus of ayes.)

3 CHAIRPERSON MITTEN: Those opposed, please say  
4 no.

5 (No response.)

6 CHAIRPERSON MITTEN: Mr. Bastida?

7 MR. BASTIDA: The staff will record the vote five  
8 to zero. The vote is based on the first alternative,  
9 eliminating the office possibility. Ms. Mitten moving, Mr.  
10 Parsons seconded, Mr. Hood and Mr. May voting on the  
11 affirmative, Mr. Hannahan not present, not voting.

12 CHAIRPERSON MITTEN: Okay, great. Thank you.

13 MR. HOOD: Madame Chair, I just would say, I  
14 believe if we're going to go forward with the hearing, there may  
15 be some people coming forward to testify, may be why we should  
16 include that back in the case. I'm not sure. I was going to  
17 leave that up to the hearing, but we've taken it out now. There  
18 may be some testify why we may include it back, with the  
19 recommendations of the Office of Planning.

20 CHAIRPERSON MITTEN: Well, what we could do is  
21 just be somewhat flexible about taking that kind of testimony  
22 and hearing it in case we wanted to expand the scope of the  
23 test.

24 MR. BASTIDA: Madame Chairman?

25 CHAIRPERSON MITTEN: Yes, sir.

1 MR. BASTIDA: If you were to do that, then you  
2 could not take an action on the office because the office is a  
3 more intensive use, and accordingly, you couldn't take an action  
4 in which the advertisement is of a lower intensity than a  
5 potential actual would take place.

6 CHAIRPERSON MITTEN: I understand that.

7 MR. HOOD: I don't think I said we would take an  
8 action. I think that I said the testimony may come forward.

9 MR. BASTIDA: Okay, so the advertisement would be  
10 without including the commercial?

11 CHAIRPERSON MITTEN: Without including the  
12 office.

13 MR. BASTIDA: The office commercial. I'm sorry.

14 CHAIRPERSON MITTEN: Right.

15 MR. BASTIDA: Thank you.

16 CHAIRPERSON MITTEN: Thanks. Okay, now let's go  
17 back to the zoning consistency case for Square 37. I'm going to  
18 ask Mr. Parsons to give us his thoughts on how -- would you have  
19 us completely dispatch with the case on the high density  
20 residential neighborhood commercial overlay district and decide  
21 that before we would take up the zoning consistency case? How  
22 would you have us proceed? Yes?

23 MR. PARSONS: Either that or advertise this as R-  
24 5-D or R-5-E.

25 CHAIRPERSON MITTEN: There are two things that to

1 me are problematic, and let's just talk about that. One is that  
2 the folks in Square 37 made with initial request quite a while  
3 ago for some action from the Commission to insure that the  
4 zoning on the site is not inconsistent with the Comprehensive  
5 Plan. Given how long it will probably take to get through the  
6 full process in terms of deciding the overlay district, I think  
7 causing them to wait even longer, is not appropriate.

8 The other concern that I have is if we go through  
9 with -- I guess we could do -- if we did R-5-E and R-5-D, then  
10 we'd have to have a second go-around -- we'd have to have  
11 another set of hearings to hear the overlay being imposed there.

12 So, I guess I'm just trying to strategize about how to make  
13 this process as efficient as possible.

14 I guess what I might suggest in the alternative  
15 would be if we would set both these cases down with the  
16 understanding that we will move the overlay case forward first,  
17 and that they can move along, and the consistency case would  
18 trail the overlay but not trail it to the extent that you're  
19 -- it would be heard -- well, I know what --

20 MR. PARSONS: It sounds illegal to me.

21 CHAIRPERSON MITTEN: Okay. Anybody want to help  
22 me out? How about Mr. Bergstein?

23 MR. HOOD: As a person who also is going to have  
24 a vote on whether it's set down, I like your way of doing  
25 things. I think if we kind of know what we're going to do first

1 and then if the other one kind of subsidizes and comes later after  
2 we've made our decision on the first case, I think it would be  
3 in order so we won't keep people out there waiting because it  
4 was dated October 16, 2000 when I was a chairperson, and we're  
5 just getting around to it, and this is 2001. So, I would agree  
6 with it's your comments, Madame Chair, if it's legal.

7 CHAIRPERSON MITTEN: Let me hear from Mr. May and  
8 then Mr. Bergstein.

9 MR. MAY: I have one question, and maybe it's my  
10 inexperience with this sort of a problem that's showing up.

11 CHAIRPERSON MITTEN: No, this is a new problem.

12 MR. MAY: Well, if we're considering 01-33TA and  
13 it includes language that specifies that these lots in Square 37  
14 would have this designation, haven't we rendered the second case  
15 moot?

16 CHAIRPERSON MITTEN: Now, you raise a good issue.  
17 Just let me go back here for a second.

18 MR. MAY: Both versions of the wording  
19 specifically mention Square 37 and those lots.

20 CHAIRPERSON MITTEN: Okay. Let's all turn to  
21 page six and look at the proposed language for 1310.1. This is  
22 typically the way the -- well, not typically, but sometimes the  
23 way the overlays are put in place is it affects lots in that  
24 square that have a certain underlying zoning. So, this would  
25 only affect this overlay to the extent that it gets approved is

1       only going to affect those specified lots in Square 37 if they  
2       are ultimately zoned R-5-D or R-5-E, which means that Mr.  
3       Parsons way of proceeding isn't --

4               MR. BERGSTEIN: I think you need to change the  
5       language because that's not how I read it.

6               CHAIRPERSON MITTEN: Okay.

7               MR. BERGSTEIN: I didn't read the first list of  
8       lots as being only the portions of those lots that are  
9       designated R-5-D or R-5-E. It seemed to me that the language  
10      that follows was merely instructive that in the future, the  
11      criteria for determining what lots would go into this overlay  
12      would be those which had already been designated as R-5-D or R-  
13      5-E.

14              I think you'd need to say the area of those lots,  
15      if that's what you're saying, which are designated R-5-D or R-5-  
16      E, or are you saying that --have those lots all been designated,  
17      one or the other at this point, or is the question --

18              CHAIRPERSON MITTEN: No, they haven't been  
19      designated that at all.

20              MR. BERGSTEIN: Yes.

21              CHAIRPERSON MITTEN: That's kind of the point.

22              MR. BERGSTEIN: Well, my thought is if you take  
23      care of the rezoning first with the understanding that this  
24      would be second --

25              CHAIRPERSON MITTEN: Right.

1 MR. BERGSTEIN: I don't think, as long as we  
2 explain --

3 CHAIRPERSON MITTEN: That's actually not the way  
4 we want to proceed. Mr. Parsons is suggesting, and he's right -  
5 - well, it's difficult because the Office of Planning is not  
6 saying we're recommending R-5-D or R-5-E absent the commercial  
7 overlay.

8 MR. BERGSTEIN: Oh.

9 CHAIRPERSON MITTEN: So, we can't, you know, in a  
10 sense, we can't move that forward absent the overlay. Mr.  
11 Parsons concern is well, we have to deal with the overlay first  
12 in order to create it to even consider it.

13 MR. BERGSTEIN: That is correct.

14 CHAIRPERSON MITTEN: Okay, so how far --do we  
15 have to complete the entire process and be at a published final  
16 order before we can take up the rezoning on Square 37, or is  
17 there another way that we can proceed that would be --

18 MR. BERGSTEIN: I thought the concern was that OP  
19 didn't want to proceed with that rezoning for those lots unless  
20 there was an assurance that it was actually in the overlay.  
21 There's no assurance it's actually going to be in the overlay  
22 unless the overlay becomes final, if that's the problem.

23 CHAIRPERSON MITTEN: Well, I think the concern,  
24 and if I misstate this, correct me, is that Office of Planning  
25 isn't comfortable with the two other zones that have been



1 proposed in CR and C-2-C that would be not inconsistent with the  
2 generalized land use designation for the property.

3 R-5-D and R-5-E alone don't get you to be not  
4 inconsistent. So, it's a package. It's those high density  
5 residential zones with the overlay that constitute what they're  
6 proposing at being not inconsistent. Is that right?

7 MR. ALTMAN: That's right because I mean, the  
8 dilemma is not that we're opposed to R-5-D or R-5-E. It's that  
9 the case that was brought forward was one of the consistency  
10 actions. So, the dilemma that we were also in is finding, when  
11 we look through the zoning regulations, based on sort of the  
12 extensive, you know, consultations that we've had in the  
13 community and hearing all of the issues and concerns that have  
14 been there, is how do you craft a zone that's not only  
15 applicable here, but a problem that we've found in other high  
16 density residential zones, which this one calls to light.

17 CHAIRPERSON MITTEN: Yes.

18 MR. ALTMAN: So, we said okay, let's step back  
19 and see what would be the right way to do this. Yes, I could  
20 just take a zone and plop it on here, but I don't think it would  
21 achieve the desired development outcome. So, you step back. We  
22 looked at a zone that would both not be inconsistent with the  
23 comprehensive plan, meet the consistency requirement, and at the  
24 same time, further the community planning goals. Since we  
25 couldn't find a way to do that with the existing zoning

1 classification.

2 That's why we put forward this new category of  
3 zoning so that it can be considered and potentially mapped on  
4 these lots as well as others. But yes, that was exactly the  
5 dilemma. Otherwise, I don't know that we couldn't find some  
6 that we supported moving forward both of those aims.

7 MS. McCARTHY: But I think it's probably  
8 analogous to what the Commission did in the Tree and Slope  
9 Protection overlay district where when that was initially  
10 passed, Section 1511.2 said the TSP overlay district shall  
11 include a number of individual overlay districts that may be  
12 established and mapped from time to time consistent with the  
13 general provisions of this chapter.

14 So, maybe when we worked with corp counsel to  
15 actually do the final phrasing of this for advertisement, we  
16 should take out the specific reference to the lots on Square 37  
17 and insert a more general paragraph like that to indicate that  
18 it could be mapped in other places. Then we would go back to  
19 the map amendment for Square 37 and alter the language there so  
20 we're saying that the overlay established in Chapter 13 would be  
21 then mapped onto those lots and squares.

22 CHAIRPERSON MITTEN: Okay. I think that's very  
23 good, and I don't want to take anything away from that  
24 suggestion, but it still leaves us with our problem, Mr.  
25 Bergstein, which is can we, and before having a final published

1 order on the overlay district, can we set down and potentially  
2 have a public hearing on a rezoning that is proposed to include  
3 that or reflect that overlay?

4 MR. BERGSTEIN: I don't see any reason why you  
5 can't as long as that presumption is -- that there needs to be  
6 something else that will formally happen before you do that, but  
7 I don't see why you can't have simultaneous hearings, even  
8 though several are in anticipation of something else happening.  
9 Obviously, if you don't do that something else, it will become  
10 immediately moot.

11 CHAIRPERSON MITTEN: Okay.

12 MR. BERGSTEIN: But it's a matter of your own  
13 sort of administrative efficiency. If you don't mind the fact  
14 that you're going to be having a hearing on something that is  
15 predicated upon you doing something else that you may not end up  
16 doing finally, then that's a matter of your own efficiency in  
17 deciding to have that. Ultimately, if you think it's likely  
18 that all will come together, then all will come together a lot  
19 quicker than if you waited.

20 CHAIRPERSON MITTEN: Okay. Does that make you  
21 uncomfortable, Mr. Parsons?

22 MR. PARSONS: Well, yes, because it seems as  
23 though the uses that we would include in this new zone would be  
24 a product of Square 37. That is, if the community didn't want a  
25 blueprint shop, we'd take out blueprint shop so as -- in other

1 words, the hearing won't be city-wide. It will be a very  
2 localized hearing, whether we like it or not.

3 CHAIRPERSON MITTEN: But how is making the map  
4 amendment case lag the text amendment case going to change that?

5 Lag, you know, with a six month or eight month interval, how is  
6 that going to change who takes an interest in it? I mean,  
7 everybody knows that this is being created specifically, or the  
8 catalyst for it is Square 37. So, you're not going to avoid  
9 that by making a larger span of time between when you hear the  
10 text case and when you hear the map case.

11 I think what it does is it makes -- we need to  
12 think very carefully about when we hear recommendations about  
13 include this, don't include that, that they're not just specific  
14 to a particular area and that it's really what we want city-  
15 wide. I think the idea of advertising the alternative language  
16 that the Petitioner had proposed does suggest that in the event  
17 that the neighborhood commercial overlay district doesn't  
18 survive, we still are bringing forward a consistency case, which  
19 we're compelled to do.

20 MR. MAY: Can I suggest another possibility?

21 CHAIRPERSON MITTEN: Certainly. I hope it's  
22 good.

23 MR. MAY: I'm trying to uncomplicate things  
24 rather than complicate. What if we were to proceed to set down  
25 the map change for the sake of consistency as simply one that

1 mentions CR, C-2C, or R-5-E as alternatives for those specific  
2 squares, knowing that this case would be heard, theoretically,  
3 after the NC comes into being? By advertising that range, we  
4 have flexibility within that range. I mean, CR and C-2-C  
5 obviously have higher impact. So, we have great flexibility to  
6 impose an additional overlay if we go to R-5-D or R-5-E.

7 CHAIRPERSON MITTEN: I think that the reason why  
8 that's not to be recommended is that absent the overlay, R-5-D  
9 and R-5-E, we know them to be inconsistent with the  
10 Comprehensive Plan. So, I don't think that we could or that we  
11 should do that. It was a good try, though.

12 MR. BASTIDA: Madame Chairman?

13 CHAIRPERSON MITTEN: Yes, Mr. Bastida.

14 MR. BASTIDA: How about the setting down the text  
15 and then the map amendment also, but on our scheduling, we will  
16 schedule it for six weeks after the hearing on the text  
17 amendment so you will have probably a preliminary decision that  
18 narrows the focus of the commercial overlay and then narrows  
19 down to Square 37. Then people who are coming to the hearing,  
20 in fact, could address the issues that they like or dislike  
21 about the proposal we're making.

22 CHAIRPERSON MITTEN: Okay, that's a good  
23 suggestion.

24 MR. PARSONS: I like that.

25 CHAIRPERSON MITTEN: Okay.

1 MR. PARSONS: Six seeks.

2 CHAIRPERSON MITTEN: I move that we set down  
3 Zoning Commission Case No. 00-27M, and we will advertise the  
4 language recommended by the Office of Planning, which would be  
5 R-5-D within the neighborhood commercial overlay and R-5-E  
6 within the neighborhood commercial overlay and C-2-C and CR, and  
7 that that case would be scheduled to proceed approximately six  
8 weeks behind the text amendment case that would create the  
9 overlay. Is there a second?

10 MR. MAY: Second.

11 CHAIRPERSON MITTEN: Any more discussion? All  
12 those in favor, please say aye.

13 (Chorus of ayes.)

14 CHAIRPERSON MITTEN: Those opposed, please say  
15 no.

16 (No response.)

17 CHAIRPERSON MITTEN: Mr. Bastida?

18 MR. BASTIDA: The staff will return the vote of  
19 four to zero, Ms. Mitten moving, Mr. Parson seconding, and Mr.  
20 Hood and Mr. May voting on the affirmative.

21 Could the staff ask a clarification point? That  
22 means that the map amendment will not include the overlay?

23 CHAIRPERSON MITTEN: Yes, in terms of the  
24 advertised language, Ms. McCarthy had made a good suggestion.  
25 Let me just find it here. Basically, that the proposed language

1 for 1310.1 would delete references to Square 37 specifically.

2 MR. BASTIDA: Yes, that is correct, but when I  
3 advertise 00-27M, I thought that we wanted to advertise the  
4 commercial overlay also.

5 CHAIRPERSON MITTEN: That's correct.

6 MR. BASTIDA: Okay.

7 CHAIRPERSON MITTEN: We're going to advertise  
8 four zones.

9 MR. BASTIDA: Four zones, so you are advertising  
10 the R-5-B, slash commercial overlay, R-5-E, slash commercial  
11 overlay, the CR and the C-2-C, I think.

12 CHAIRPERSON MITTEN: Yes.

13 MR. BASTIDA: Okay.

14 CHAIRPERSON MITTEN: Yes.

15 MR. BASTIDA: It was not clear in my mind, so I  
16 just wanted to make sure.

17 CHAIRPERSON MITTEN: I could understand how that  
18 could happen.

19 MR. BASTIDA: Okay, thank you.

20 CHAIRPERSON MITTEN: Thank you. Okay, let's go  
21 now to Zoning Commission Case No. 01-19C, the Trenton Terrace  
22 PUD. Ask somebody from the Office of Planning to introduce that  
23 for us.

24 MS. MCCARTHY: Yes, Madame Chair, I'm going to  
25 ask Maxine Brown-Roberts from our staff to present this case.

1 It's a planned unit development for a project that will replace  
2 a failed low income housing project with a mixed townhouse for  
3 ownership and apartment unit project. I'll have Ms. Brown-  
4 Roberts present that.

5 MS. BROWN-ROBERTS: Good afternoon, Madame  
6 Chairman and members of the Commission. The application  
7 proposes to replace the existing Trenton Terrace Apartments with  
8 120 townhouses, 140 garden apartment units, seven of which will  
9 be for senior citizens and 70 of which will be for families.

10 The development also has a community center. The  
11 Applicant proposes 202 parking spaces as required by the zoning  
12 regulations. The Applicant has met with the Office of Planning  
13 on a number of occasions and have discussed the number -- we  
14 have concerns concerning the number of curb cuts along  
15 Mississippi Avenue and the relationship of the apartments to the  
16 existing single family residents along Trenton Place.

17 We are also discussing providing through access  
18 along the center drive. The Office of Planning continues to  
19 work with the Applicant on improving the proposed development,  
20 and recommends that this application be set down for hearing.

21 CHAIRPERSON MITTEN: Thank you, Ms. Roberts.  
22 Before we go to questions from the Commission, I just consulted  
23 with Mr. Hood, and I've determined that it's not just me that's  
24 warm, so if anyone would like to take their jacket off, please  
25 do so.



1 Any questions for the Office of Planning about  
2 the Trenton Terrace PUD?

3 MR. HOOD: Yes, Madame Chair. On page two of the  
4 Office of Planning's report under proposal, towards the latter  
5 part of the paragraph, it says, "The Applicant is working with  
6 existing residents to maximize the numbers of persons and  
7 families who qualify and to purchase a home or rent the upgraded  
8 apartments. It is envisioned that this program will enable  
9 approximately ten of the existing residents to become homeowners  
10 and remain in the area in which they have lived for a long  
11 time."

12 My concern is, I want to make sure that this  
13 happens in houses actually being done. I mean, you can bring it  
14 to the hearing, not now.

15 CHAIRPERSON MITTEN: Okay.

16 MR. HOOD: One of the things I want to make sure  
17 that we have is that okay, how is this actually being done.

18 CHAIRPERSON MITTEN: Okay.

19 MR. HOOD: A procedural type --

20 MS. MCCARTHY: We could mention briefly that the  
21 developer is setting up a homeowner's club which is working with  
22 the prospective homeowners and providing technical assistance  
23 and financial counseling in order to make that a reality. It  
24 was based on their experience so far with applications for the  
25 club that they came up with the estimate of approximately ten,

1 but we will definitely work on providing more information on  
2 that.

3 MR. HOOD: Okay, thank you.

4 MR. MAY: Is the existing development not fully  
5 occupied?

6 MS. BROWN-ROBERTS: I am not 100 percent sure if  
7 they are fully occupied at this time.

8 MR. MAY: It just seems interesting that ten out  
9 of 214 apartments would be -- I mean, at this early stage would  
10 be determined.

11 MS. BROWN-ROBERTS: Most of the current residents  
12 are really low income who are on subsidies.

13 MS. MCCARTHY: Right, and there's a substantial  
14 component of the current residents who are elderly, and they are  
15 conceived of as the prime market for the elderly apartments that  
16 will be included as part of the project.

17 MR. MAY: Okay, thanks.

18 CHAIRPERSON MITTEN: Perhaps just to sort of  
19 capture what Mr. Hood was asking about and what Mr. May is  
20 asking about is just can we get a sense of who's living there,  
21 how many people are living there now, and then what's the  
22 program that's going to be put in place so we have a sense of  
23 how this project is going to transition.

24 MS. BROWN-ROBERTS: Okay.

25 CHAIRPERSON MITTEN: Any other questions for the

1 Office of Planning?

2 MR. PARSONS: I'm a little concerned about the  
3 storm water run-off. This project is much more dense than the  
4 existing development as shown on the first sheet in the package.

5 It's also very steep, as can be seen there. I wondered if  
6 anything was -- I think we ought to put it through the review of  
7 the environmental folks to see whether we're going to have a  
8 stormwater situation in Oxen Run below.

9 MS. BROWN-ROBERTS: Definitely.

10 MR. PARSONS: Okay.

11 MR. PARSONS: Then this mid-block crossing, let's  
12 see, shown on the second sheet, which is called the site plan,  
13 on Mississippi Avenue to get to the park across the street.  
14 Actually, there are two of them, but the one that's in mid-block  
15 I'm curious about, maybe DPW could assist us with that as to  
16 whether that's a safe environment or whether a light would be  
17 required for the children.

18 I guess it's located there because the ancillary  
19 community building is above it and there's a park or some kind  
20 of an amenity there that I can't really understand at this  
21 point, but a little green space that leads one down to the  
22 crossing. I just wonder if that's placed in the proper  
23 location.

24 Other than that, let's go ahead.

25 MS. BROWN-ROBERTS: In fact, we had some concerns

1 about the mid-block blocking and the crossing there. We have  
2 mentioned that to the Applicant, and we will be working with DPW  
3 on getting that issue resolved.

4 MR. PARSONS: Okay, very well.

5 CHAIRPERSON MITTEN: Ms. Brown-Roberts, just as  
6 we go forward, your mike seems to be giving us feedback for some  
7 reason. Maybe you and Ms. McCarthy could share a mike or  
8 something.

9 All right, we have a recommendation to set this  
10 case down by the Office of Planning.

11 MR. HOOD: Madame Chair, I recommend that we set  
12 this case down, Case No. 01-19C for a hearing.

13 CHAIRPERSON MITTEN: Is there a second?

14 MR. MAY: Second.

15 CHAIRPERSON MITTEN: Any further discussion? All  
16 those in favor of setting down Zoning Commission Case No. 01-  
17 19C, please say aye.

18 (Chorus of ayes.)

19 CHAIRPERSON MITTEN: Those opposed, please say  
20 no.

21 (No response.)

22 CHAIRPERSON MITTEN: Mr. Bastida?

23 MR. BASTIDA: Madame Chairman, the staff will  
24 record the vote four to zero, Mr. Hood moving and Mr. May  
25 seconding, Ms. Mitten voting on the affirmative and Mr. Parsons

1 the same, Mr. Hannahan not present, not voting.

2 CHAIRPERSON MITTEN: Thank you. The next case is  
3 Zoning Commission Case No. 01-32TA, which is an emergency text  
4 amendment regarding concrete plants and CM zones. Is Ms.  
5 Steingasser going to take that one?

6 MS. STEINGASSER: Yes, ma'am, I am. The Office  
7 of Planning received many letters, as did I know the Zoning  
8 Commission and their correspondence on the agenda item, letters  
9 regarding the request for emergency text amendments regarding  
10 concrete plans to be either considered by prohibition or by  
11 special exception. The Office of Planning did a preliminary  
12 review of the CM zones throughout the city and their adjacency  
13 to residential properties. As we noted and showed on a map  
14 attached to the report, a great percentage of the CM and  
15 industrial zones are adjacent to low to moderate residential  
16 zoned properties.

17 We looked at the proposed text submitted by the  
18 Applicants and Petitioners, and we found that the text was very  
19 similar to that established for intermediate recycling  
20 facilities. We preferred the special exception text over the  
21 prohibition text, and we felt that the uses had many  
22 similarities, including the traffic, truck stacking loading of  
23 the facilities, the traffic onto the adjacent roadway systems,  
24 storage of materials on site, dust, noise, and hours of  
25 operation.

1           We recommended the alternative language proposed  
2           by the Applicant with a few modifications to make the language  
3           more consistent with the special exception criteria standards  
4           for the recycling facilities. Those were highlighted on the  
5           text, which I've got here, and included that the facilities be  
6           located no nearer than 200 feet of a residential property that  
7           is used for public park instead of the 400 as proposed.

8           We recommended a change to Subsection B by the  
9           deletion of the phrase "or from streets that are too narrow to  
10          accommodate existing uses and the proposed facility." We felt  
11          that that phrase, "streets that are too narrow" was too  
12          objective and too vague to define and apply.

13          The other change we made was to subsection F,  
14          where it requested one parking space per employee. We felt that  
15          the existing industrial parking spaces of one per 1,000 which  
16          apply for all industrial uses, was sufficient and that there was  
17          nothing to warrant additional requirements for this particular  
18          use.

19          Again, in Subsection G, the Applicants had  
20          proposed 800 feet. We changed that to 500 feet, again for  
21          consistency, and again, with the hours of operation between 5:00  
22          p.m. and 7:00 a.m., we recommend 7:00 p.m. to 7:00 a.m., again,  
23          consistency with the existing recycling facilities.

24          Based on that, we did support their petition for  
25          emergency text regulations, and if the Commission agrees to go

1 forward with that, we will be providing a further study of the  
2 concrete plan impacts within the CM zone and on the adjacent  
3 residential properties.

4 CHAIRPERSON MITTEN: Before we go any further,  
5 let me just ask, is there any objection to waiving our rules to  
6 accept the Office of Planning report after the fact? Any  
7 objection to that?

8 Okay. Just a moment while we get some additional  
9 information.

10 Any questions for the Office of Planning?

11 MR. HOOD: Madame Chair, I don't know if this is  
12 a question. I guess this would be a statement. As discovered  
13 or discussed in the Office of Planning's report, and I'm dealing  
14 with regulation -- well, it's talking about the uses in the CM  
15 zone, and alphabet N, "any light manufacturing, processing,  
16 fabricating or repair establishment." That has gotten us into a  
17 lot of trouble over the years, and I see it's still coming back  
18 because the light manufacturing processing can be assumed as  
19 anything, and it has been contingent on being used as anything.

20 I think in the CM zone, we should try to deal  
21 with something as far as going, even to the point of saying  
22 heavy industrial uses. My rationale for that is, I believe it's  
23 more than just cement plants who come in up under a light  
24 manufacturing process, fabricating or repair establishments.

25 So, I don't know exactly if we can go back to the

1 Office of Planning to look at that and see if we can be more  
2 specific. Light manufacturing and processing and fabricating is  
3 very broad. I know in some wards in the city, it's been used in  
4 the CM zone, so I encourage and I applaud the Office of Planning  
5 coming forward with this CM, if we choose, to come up under some  
6 type of special exception.

7 I would encourage us to be more specific, and  
8 also just not limiting it to cement plants. While I do favor  
9 what's in front of me, I think that we need to come up with some  
10 heavy industrial uses, as well as being specific to what those  
11 uses are. I don't have anything right now what those uses are,  
12 but I do think that that's something that we need to look into.

13 CHAIRPERSON MITTEN: I think your observation is  
14 absolutely right, and there are many sections of the ordinance  
15 where there's a decided lack of specificity about uses, and the  
16 uses are being fit into broad categories like in this case. So,  
17 anything that the Office of Planning would want to bring forward  
18 that would add greater specificity, whether it's in the CM zone  
19 or some of the other zones where we have particular problems, I  
20 think we would welcome that.

21 MR. HOOD: Madame Chair, I just have one other  
22 comment, and I guess maybe Mr. Bergstein will be able to help me  
23 with this. If this is approved, Mr. Bergstein, are those that  
24 already exist in the CM zone, will they be grandfathered in, or  
25 will they have to come into compliance with the regulations?



1 MR. BERGSTEIN: No, they'd be grandfathered in.

2 MR. HOOD: Okay.

3 MR. BERGSTEIN: If they've got a building permit  
4 or a C of O, then they can proceed under the zoning regulations  
5 that existed when those documents were received. This is  
6 prospective.

7 MR. HOOD: So, those who the new regulations say  
8 operating from 7:00 p.m. to 7:00 a.m., and those that operate at  
9 4:30 in the morning will continue to be able to operate? You  
10 don't have to respond. I just wanted to put that on the record.

11  
12 CHAIRPERSON MITTEN: Could you turn on your mike?

13 MR. BERGSTEIN: I thought I had. I hit it twice.  
14 I'm going to have to think about where the zoning regulations  
15 contain operational requirements and whether or not those would  
16 be grandfathered into existing uses that had gone before the  
17 approval process, et cetera. So, I have not thought about that,  
18 and I will have to consider that.

19 MR. HOOD: Thank you, Madame Chair.

20 CHAIRPERSON MITTEN: I had one question because  
21 I've seen this phrase come up in another context. It's not  
22 defined, to my knowledge. On page -- I guess I'll have to go by  
23 the section -- Section 802.10(b), where it says there shall be  
24 no truck access or queuing to the site from residential streets.  
25 What exactly is a residential street?

1 MS. STEINGASSER: The streets are defined by  
2 Public Works, and there is a distinct definition. I'll make  
3 sure that that gets included.

4 CHAIRPERSON MITTEN: That would be great because  
5 either that or we could just make reference to the fact that  
6 we're using their definition, because absent that, we're  
7 supposed to go to the dictionary, and I'm thinking that that's  
8 not --

9 MS. STEINGASSER: No, no, ma'am. There is an  
10 engineering standard for the width and development of the  
11 street.

12 CHAIRPERSON MITTEN: Okay, great. All right, we  
13 have a recommendation from the Office of Planning to set down  
14 what is Zoning Commission Case No. 01-32TA which is an emergency  
15 text amendment that would provide special exception review for  
16 concrete plants in the CM zones.

17 MR. HOOD: I make a motion, Madame Chair, that we  
18 -- now, for clarification, are we passing this now or are we  
19 setting it down for emergency legislation for hearing?

20 CHAIRPERSON MITTEN: I think it's a two-step  
21 process, isn't it?

22 MR. BERGSTEIN: Well, that's my question. I  
23 assume that what's being requested of you is that you take  
24 emergency action today, which would mean that from the moment of  
25 your vote and for the next 120 days, these regulations are in

1 effect. Then you would also set this down for hearing, and  
2 hopefully the hearing process and the publication of a proposed  
3 rule and final rule would all be accomplished within that 120  
4 days.

5 MR. HOOD: Madame Chair, do we have a case  
6 number?

7 CHAIRPERSON MITTEN: Yes, it's 01-32TA.

8 MR. HOOD: I make a motion that we set down 01-  
9 32TA as emergency legislation so it can come in effect  
10 immediately. I guess I'll do that first.

11 CHAIRPERSON MITTEN: Okay, so you're putting  
12 forward the emergency text amendment first, is that correct?

13 MR. HOOD: Yes.

14 CHAIRPERSON MITTEN: Okay, is there a second?

15 MR. MAY: Second.

16 CHAIRPERSON MITTEN: Any discussion on the  
17 emergency text amendment? All those in favor, please say aye.

18 (Chorus of ayes.)

19 CHAIRPERSON MITTEN: Those opposed, please say  
20 no.

21 (No response.)

22 CHAIRPERSON MITTEN: Mr. Bastida?

23 MR. BASTIDA: The staff will record the vote four  
24 to zero, Mr. Hood moving and Mr. May seconding, Mr. Parsons and  
25 Ms. Mitten voting on the affirmative. This is for the emergency

1 legislation.

2 CHAIRPERSON MITTEN: Yes.

3 MR. BERGSTEIN: So, when Mr. Hood referred to set  
4 down, what you really voted on was that you voted to take  
5 emergency action --

6 CHAIRPERSON MITTEN: Yes.

7 MR. BERGSTEIN: -- to promulgate these rules on  
8 an emergency basis?

9 CHAIRPERSON MITTEN: Yes, and now we're going to  
10 step two.

11 MR. HOOD: Is it the same case number?

12 CHAIRPERSON MITTEN: Should they have different  
13 case numbers, Mr. Bastida?

14 MR. BASTIDA: So far, we have always kept the  
15 same case number for EF, so we should do the same thing for  
16 these as a matter of consistency unless the Chair would like to  
17 do otherwise.

18 CHAIRPERSON MITTEN: I think it's fine to have  
19 them together because we would want to incorporate the records.  
20 The record on the emergency -- well, we won't have a record on  
21 the emergency. No, it's the same.

22 MR. BASTIDA: Yes.

23 CHAIRPERSON MITTEN: Go ahead, Mr. Hood.

24 MR. HOOD: Madame Chair, I make a motion that we  
25 set down Case No. 01-32TA for a hearing.

1 MR. MAY: Second.

2 CHAIRPERSON MITTEN: Any further discussion on  
3 that? All those in favor, please say aye.

4 (Chorus of ayes.)

5 CHAIRPERSON MITTEN: Those opposed, please say  
6 no.

7 (No response.)

8 CHAIRPERSON MITTEN: Mr. Bastida, on the set  
9 down?

10 MR. BASTIDA: The staff will record the vote four  
11 to zero, Mr. Hood moving and Mr. May seconding, Mr. Parsons and  
12 Ms. Mitten voting on the affirmative, Mr. Hannahan not present,  
13 not voting. Thank you.

14 CHAIRPERSON MITTEN: Thank you. Okay, now as we  
15 turn to Zoning Commission Case No. 01-24C, which is a PUD  
16 application at North Capitol Street and Riggs Road, is there any  
17 objection to waiving the rules to accept the Office of Planning  
18 report?

19 Mr. Jackson, whenever you're ready.

20 MR. JACKSON: Madame Chair and members of the  
21 Commission, we would stand on the record and be willing to  
22 answer any questions that you have.

23 CHAIRPERSON MITTEN: Very good. Okay, anybody  
24 have any questions for the Office of Planning? I had one or  
25 two, if I could. Actually, these are things to be considered

1 when you bring the case forward at the hearing. I'd like to see  
2 a discussion of an idea which is, given that what is designated  
3 for the site in the generalized land use map is commercial, and  
4 even though it's going to be a commercial zone, we know that in  
5 the context of the PUD, it's going to be residential use.

6 Could you address the issue of whether or not the PUD,  
7 if approved, would eliminate an opportunity for neighborhood  
8 serving commercial. Are there other areas that are going to  
9 satisfy whatever demand might exist, now or in the future?

10 The other issue, I know you raised concerns for  
11 us related to traffic, but I had a specific concern as it  
12 relates to at least my understanding of the access to the  
13 parking, which looks like it's going to be from the public  
14 alley. Is that correct?

15 MR. JACKSON: Yes, it is.

16 CHAIRPERSON MITTEN: So, I would want some  
17 discussion about the interaction between that driveway and Riggs  
18 Road and whether or not -- I don't know what the configuration  
19 is there, but if people would be attempting to make left turns  
20 from westbound Riggs Road into that alley, or if people would be  
21 attempting to make left turns out of the alley to go westbound  
22 on Riggs Road, I could see that that could potentially be  
23 problematic. So, if we could get some specific discussion about  
24 that.

25 MR. JACKSON: All right.

1 CHAIRPERSON MITTEN: In addition to the issues  
2 that you raised.

3 MR. JACKSON: Yes, Madame Chair.

4 CHAIRPERSON MITTEN: Anyone else have questions?  
5 Mr. Parsons?

6 MR. PARSONS: I note in your report that you're  
7 going to be working with the Applicant on amenities. What do  
8 you have in mind there?

9 CHAIRPERSON MITTEN: Well, we think that the  
10 overall proposals provide only housing, and housing in the area  
11 has great merit. However, what we'd like to see is the  
12 clarification of the type of amenities that would extend beyond  
13 the site to benefit the overall community.

14 We were looking at getting some more detailed  
15 explanation of their landscaping along the perimeter, possibly  
16 working with the apartment building next door, which could  
17 conceivably go the same direction, this is, become for available  
18 housing at some point in the future, and see if there's some way  
19 that they can form more of a linkage of open space between the  
20 open areas that exist within that apartment complex and their  
21 green spaces behind the development along the parking lot. That  
22 is to say, maybe adjusting the parking around such a way that  
23 there was more of a linkage of open space across the alley.

24 The Applicant has expressed a willingness to work  
25 with the adjacent property owner to see if that's a possibility

1 and if so, they will pursue that. At this point, those are the  
2 types of issues that we're trying to work with them on.

3 MR. PARSONS: Okay, thank you.

4 CHAIRPERSON MITTEN: Any other questions for the  
5 Office of Planning?

6 I would move that we set down Case No. 01-24C for  
7 public hearing.

8 MR. HOOD: Second.

9 CHAIRPERSON MITTEN: Any discussion? All those  
10 in favor, please say aye.

11 (Chorus of ayes.)

12 CHAIRPERSON MITTEN: Those opposed, please say  
13 no.

14 (No response.)

15 CHAIRPERSON MITTEN: Mr. Bastida?

16 MR. BASTIDA: The staff will record the vote four  
17 to zero, Ms. Mitten moving, Mr. Hood seconding, Mr. Parsons and  
18 Mr. May voting on the affirmative, Mr. Hannahan not present, not  
19 voting. Thank you.

20 CHAIRPERSON MITTEN: Thank you. All right, now  
21 we'll move to proposed action. The first case will be Zoning  
22 Commission Case No. 01-07C, which is the PUD for 1700 to 1730 K  
23 Street. There are several issues that we need to discuss, and  
24 so we'll just take them up one at a time and then at the end if  
25 I've forgotten anything, somebody please remind me.



1           The first issue I think we need to discuss is one  
2           that we heard a bit about at the hearing, and we had  
3           recommendations from both the Office of Planning and the  
4           Department of Housing Community Development as it relates to  
5           housing linkage. One of the things I'd like to say as we begin  
6           the discussion is this is the second time that I'm aware of that  
7           the linkage has been applied since the provisions were  
8           incorporated into the PUD regulations. I know there were  
9           linkage projects that predated that.

10           What's clear is, every time that linkage comes up  
11           and what's required is discussed, there's a lack of clarity in  
12           the regulations. We'll pass this on to folks from the Office of  
13           Planning, but we need to have a text amendment that adds clarity  
14           because it's not fair to the development community to have so  
15           much uncertainty surrounding the magnitude of the linkage  
16           payment. I think we can add clarity and predictability to the  
17           process by bringing forward a text amendment that clarifies what  
18           we expect.

19           My concern was with the magnitude of the linkage  
20           payment and the Applicant's interpretation was in large measure  
21           satisfied by the Department of Housing and Community  
22           Development's recommendations because I have felt that the  
23           intention of the regulations as it goes back to introducing it  
24           into the Comprehensive Plan was either to result in a very  
25           specific payment to the housing production trust fund, or it was

1 supposed to result in the full support from the developer of  
2 either rehabilitation of existing units or new construction of  
3 existing units, not a payment that would partially support that.

4  
5 I think the analysis that was provided by the  
6 Department of Housing and Community Development reflected the  
7 full magnitude of what it would cost on a pro rata basis to  
8 rehabilitate the required amount of density. So, I found that  
9 compelling. I think that actually represents the spirit of the  
10 linkage requirement in the ordinance.

11 Anyone have thoughts on that?

12 MR. PARSONS: I would totally agree. As I  
13 recall, they came up with a figure of 520 and change as the  
14 figure we should use, whereas the Applicant was suggesting 320.  
15 That would give us full rehabilitation as opposed to partial.

16 CHAIRPERSON MITTEN: Yes.

17 MR. PARSONS: I don't want to be redundant. I  
18 just want to support you.

19 CHAIRPERSON MITTEN: Right, thank you. I mean,  
20 what I would see going forward is that at least as it relates to  
21 if we bring a text amendment forward to add clarity, that at  
22 least as it relates to the rehabilitation alternative, that we  
23 would want to have the linkage payment tied to the actual amount  
24 of rehabilitation, which would certainly, unless we want to  
25 promote that in preference to new construction, we'd have to

1 craft something for new construction.

2 My feeling is that this interpretation would  
3 become the basis for a clarifying test amendment. Mr. May?

4 MR. MAY: I would have to agree. It seems that  
5 we're inching toward some sort of bidding war potential for  
6 getting housing linkage payments coming up with a newer and  
7 better deal that somehow meets the criteria in decreasing  
8 amounts over time.

9 I think that just as there is a formula that  
10 yields the required square footage, tieing that somehow  
11 specifically to cost of rehabilitation or cost of new  
12 construction of housing is appropriate and desirable and, as you  
13 say, we'll have to craft the language in such a way that it  
14 meets the desired goal and yields not necessarily the same thing  
15 every time, that we give developers some flexibility with how  
16 they do it and what they do, whether they do new construction or  
17 renovations.

18 CHAIRPERSON MITTEN: The other thing is, I just  
19 want to raise this so that it's not left unsaid, but were there  
20 any concerns with the relationship, because I know that one of  
21 the requirements of the ordinance is the business arrangement or  
22 the business relationship between the developer and the housing  
23 provider, and were there any issues as it related to that, or  
24 are we satisfied that their business arrangement is  
25 satisfactory?

1 I didn't find anything that troubled me. The one  
2 thing that I would just like to have written into the order that  
3 is in the ordinance but I'd like to just amplify it by repeating  
4 it in the order is that the certificate of occupancy for the  
5 commercial project is contingent upon delivery of the units that  
6 are being supported by the housing linkage payment.

7 So, it's important that that concept is in the  
8 regs, but we need to identify specifically which units they're  
9 talking about delivering so that the zoning administrator can go  
10 and identify that the promised units have, in fact, been  
11 delivered.

12 MR. PARSONS: So you mean to add something to the  
13 conditions of the order that really reflect existing  
14 regulations?

15 CHAIRPERSON MITTEN: Yes.

16 MR. PARSONS: To avoid confusion?

17 CHAIRPERSON MITTEN: Right, to avoid confusion.

18 MR. PARSONS: Probable confusion in the future.

19 CHAIRPERSON MITTEN: Right, right. The second  
20 issue that I'd like to raise is, and it's either just an  
21 oversight on my part or it's not there. I'm concerned about  
22 what I think is a lack of -- that the Applicant has not  
23 addressed their burden of proof for their request to exceed the  
24 PUD guidelines, and there's a specific requirement. I'm not  
25 going to be able to find it -- oh, here it is, in Chapter 24.

1                   This is Section 2405.3, that the Commission may  
2                   authorized an increase of not more than five percent in the  
3                   maximum height or floor area ratio provided that the increase is  
4                   essential to the successful functioning of the project and is  
5                   consistent with the purpose and evaluation standards of the PUD  
6                   regulations.

7                   It may be in the evidence. It was not in the  
8                   findings of fact. There was merely a statement in the findings  
9                   of fact that the increment would allow for successful  
10                  functioning on the PUD. I think the proof goes beyond just  
11                  making the statement.

12                  So, I would like to either have one of the  
13                  Commissioners suggest to me what I overlooked or perhaps give  
14                  the Applicant the opportunity to supplement the record, showing,  
15                  or just pointed out in the record, how that burden of proof has  
16                  been that.

17                  Are there any other Commissioners that recall?

18                  MR. PARSONS: No, and I think you're right. I'm  
19                  looking at page 3 of 19 where they just repeat what's in the  
20                  regulations essentially.

21                  CHAIRPERSON MITTEN: Right.

22                  MR. PARSONS: I think that your idea of  
23                  supplementing the record is a good one.

24                  CHAIRPERSON MITTEN: Okay. The next issue that I  
25                  wanted to raise is the issue that we asked for a supplemental

1 submission, and we did receive a supplemental submission as it  
2 relates to the court that's along the public alley, and is  
3 between the subject property and the Barr Building. The  
4 Applicant submitted their view on the subject that this is a  
5 court niche as opposed to a court. While I am the first person  
6 to admit that there is a decided lack of clarity between the  
7 definition of a court and the definition of a court niche.

8 My feeling is that this is an open court, and  
9 that there is a requirement that the minimum width of an open  
10 court is 12 feet. So, again, I think I'd like to give the  
11 Applicant the opportunity to either adjust the design to  
12 accommodate an open court, or give them the opportunity to tell  
13 us why they can't accommodate it as they would in a variance  
14 case.

15 Anyone have any thoughts about that?

16 MR. PARSONS: You know, it is amazing when you  
17 read the various definitions of court, there are one, two,  
18 three, four, five, six, seven -- seven varieties. You're  
19 suggesting that it's an open court?

20 CHAIRPERSON MITTEN: Right.

21 MR. PARSONS: As opposed to a niche?

22 CHAIRPERSON MITTEN: Yes, and really, it's just a  
23 question of -- I mean, it's not clear from the definitions, but  
24 it's up to us to make this interpretation at this point. The  
25 definition of niche, which talks about an indentation, a recess,

1 or a decorative architectural treatment of the exterior,  
2 suggests to me something different than what I see on -- I guess  
3 in the latest submission, it's level one plan, which is A3.

4 A traditional niche is just an indentation. It's  
5 small, and it would be surrounded on three sides by the building  
6 if it was a rectangular niche. So. I just think that this  
7 doesn't conjure up niche for me. This conjures up open court.

8 If the rest of the Commission agrees, then I  
9 think we should ask the Applicant to address that.

10 MR. PARSONS: Yes, the niche is more of an  
11 architectural embellishment, an aesthetic niche, if you will, an  
12 aesthetic court rather than a functional one, as this is.

13 CHAIRPERSON MITTEN: Right. Anyone else want to  
14 weigh in on the issue of court versus court niche?

15 MR. MAY: Other than to say that I was similarly  
16 confused by that problem. So, I would welcome clarification.

17 CHAIRPERSON MITTEN: Okay. Let's turn now to the  
18 issue of the public space utilization that we are asked to  
19 review, as well as the PUD itself. There are two areas in the  
20 proposal where the Applicant would like to rent public space  
21 over the alley. Does anyone have any concerns related to the  
22 public space issues?

23 MR. MAY: I had raised a concern during the  
24 hearing with regard to the light that would enter into that  
25 space and how that would be affected by taking up more of the

1 space with 5-1/2 feet of the public space being taken up. Now  
2 that we have seen those diagrams, I think I would have to agree  
3 that the consequence with regard to reflected light is perhaps  
4 not as significant as I had originally thought.

5 However, I still find it troubling that we're  
6 being asked to allow this Applicant to rent this public space  
7 over the objection of the adjacent neighbor, and with some  
8 sacrifice to their building, for the sole reason of adding  
9 another five feet of depth to the building at a point where I'm  
10 just not persuaded it's absolutely critical to the leasability  
11 of that space.

12 CHAIRPERSON MITTEN: Since we're asking for the  
13 Applicant to supplement the record, is there something -- and  
14 perhaps I should clarify at least my own view about, or at least  
15 give me own view about the legitimacy of your raising that as an  
16 issue.

17 I know the Applicant, in addressing the concerns  
18 that the folks from the bar building had, they laid out the  
19 standard for review for requests to lease public air space.  
20 When that is the only issue before us, the standard is really  
21 just consistency with the zoning map and the intent of the  
22 regulations.

23 I think that in the context of a PUD, the questions that  
24 Commissioner May is raising are appropriate.

25 Is there something that you think the Applicant



1 could do if they supplemented the record as it relates to that  
2 that would perhaps ease your mind? Is there something you'd  
3 like to ask them for? Since it's clear that we're not going to  
4 be able to make a decision on this without some additional  
5 information from the Applicant?

6 MR. MAY: Maybe it's somehow woven into the  
7 record already, but the case that this is somehow critical to  
8 the development of this particular building would be helpful. I  
9 mean, short of that, it's a question of redesigning the core of  
10 the building, and that's not something that I would like to  
11 suggest at this point.

12 CHAIRPERSON MITTEN: Would it be fair just to ask  
13 for them to address sort of the balancing between whatever might  
14 be lost by the Barr Building in granting this versus what is  
15 gained by having this so that this is, you know, to make this  
16 building more functional so you can get a sense of the order of  
17 magnitude on each side. Would that be helpful?

18 MR. MAY: I think so, particularly in light of  
19 the fact that there are other objections that were raised by the  
20 owners of the Barr Building, that there are other issues at  
21 least in their eyes. It does seem to be a question of  
22 balancing.

23 CHAIRPERSON MITTEN: Okay. There was also, and I  
24 don't know if this is a concern of any of the Commissioners, but  
25 there was also an issue raised by the neighbor, the owner of the

1 Barr Building, with the relationship of the 17th Street facade  
2 to the Barr Building given the way that 900 17th Street is set  
3 back and the way that the existing 1700 K Street is set back  
4 before they go up to their full height, sort of in deference to  
5 the Barr Building facade.

6 I know that for myself -- I'm going to have  
7 trouble putting my hand on it, but in their supplemental  
8 materials, A32, which is the perspective rendering that I had  
9 asked for, and this was the reason that I had asked for it is  
10 because I wanted to see how the taller facade of the new  
11 building would interact, if that's an appropriate word, with the  
12 northern corner, whatever that architectural embellishment is  
13 that's on the Barr Building. I don't know that I've come to a  
14 firm conclusion.

15 I mean, the facade is a very attractive facade of  
16 the new building, and it seems to be very compatible with the  
17 Barr Building except right where they come together at the top.

18 So, I don't know if Mr. Parsons or Mr. Hood or Mr. May, if you  
19 have any direct responses to that issue, but I think it is one  
20 that is worth considering.

21 MR. PARSONS: Well, I'm going to show you another  
22 perspective. This is the one on the cover of the study?

23 CHAIRPERSON MITTEN: Yes.

24 MR. PARSONS: If you tried to do what they did at  
25 the corner of 17th and K here at this corner, it just wouldn't

1 work.

2 CHAIRPERSON MITTEN: Right.

3 MR. PARSONS: So, not to design it here today,  
4 but I don't see a way to take this elevation and notch it.

5 CHAIRPERSON MITTEN: Right.

6 MR. PARSONS: Or step it back the way the one is  
7 to the south.

8 CHAIRPERSON MITTEN: It's almost like, I mean,  
9 given the design, it can't be done.

10 MR. PARSONS: I don't think so. It would call  
11 more attention to what would look like a mistake unless we set  
12 that whole elevation, that whole floor back or floor-and-a-half.

13 CHAIRPERSON MITTEN: Right.

14 MR. PARSONS: I just don't think that would look  
15 well on this facade.

16 CHAIRPERSON MITTEN: Yes. I mean, in terms of  
17 balancing, I mean, dealing with the same kind of an exercise and  
18 with what Mr. May was struggling with on the air space, I mean,  
19 clearly the facade of the new building works so well that what  
20 might be lost in terms of the Barr Building standing on its own  
21 there, given that it's a relatively small piece of the overall  
22 building, I would say that on balance, the design works, even  
23 though it might be somewhat troubled by the relationship there.

24 Any thoughts, Mr. May?

25 MR. MAY: At the hearing and subsequent to it, I

1 did find that relationship between the Barr Building and the  
2 proposed building to be very problematic, but over time and  
3 spending more time with it and seeing newer views of it, I'm  
4 much less troubled by it now than I was before. You know, the  
5 Barr Building itself is such a distinct building that it clearly  
6 makes its own statement regardless of how tall the thing next to  
7 it is.

8 While the relationship that we have with the  
9 building on the other side, between the Barr Building and the  
10 building on the other side, is in terms of massing works well.  
11 I think that the architecture itself of that other building is  
12 far less respectful of the Barr Building.

13 So, on balance, are there different ways that it  
14 could have been handled that would have worked better?  
15 Possibly, but it is a very attractive facade in itself, and I  
16 think it is appropriate next to the Barr Building.

17 CHAIRPERSON MITTEN: Thanks. The next issue I'd  
18 like to raise is just the one that we also heard quite a bit of  
19 testimony about in the hearing, which relates to the benefits  
20 and amenities. I'll just briefly -- they're on pages four and  
21 five of the proposed findings of fact and conclusions of law.

22 Number 16, we have the urban design and  
23 architecture, and what we heard was the struggle that the Office  
24 of Planning was having with characterizing the design as  
25 superior relative to a matter-of-right project in light of the

1       rather high quality, attractive, distinctive, newer projects  
2       that are located along K Street that are matter-of-right  
3       projects, and whether this significantly exceeds the quality  
4       that we would expect from a matter-of-right project at this  
5       prominent corner.

6               There's the \$70,000 contribution to the business  
7       improvement district that would be used in Farragut Square or  
8       Longfellow Park. There's the increased tax revenue for the  
9       District that I'm not sure that what's represented in the  
10      findings of fact and conclusions of law relates to or makes a  
11      comparison between what would be the tax revenue from a matter-  
12      of-right project versus the proposed project, but rather a  
13      comparison between the current situation and the proposed  
14      project, and then a commitment to use local, small, and  
15      disadvantaged businesses and the executed first source agreement  
16      with the Department of Employment Services.

17             So, any thoughts, concerns about the magnitude of  
18      the amenities and whether or not they satisfy the PUD  
19      requirements?

20             MR. HOOD: Madame Chair, I had a concern with the  
21      LBOC and the DOES, and I'm trying to find the letter that was  
22      submitted. Sometimes it's a juggling act up here.

23             CHAIRPERSON MITTEN: I know.

24             MR. HOOD: Anyway, guess I can talk off the top  
25      of my head.

1 CHAIRPERSON MITTEN: Yes.

2 MR. HOOD: It mentions in here about Capitol  
3 Square, and I think it's been brought to my attention, and I  
4 asked the Applicant at the time about Capitol Square.  
5 Unfortunately, Potomac Investment Properties mentions that they  
6 had I guess an agreement or whatever they were doing with Akin,  
7 Young and Taub, and I remember asking at that particular  
8 hearing, which was another case, were they successful,  
9 unsuccessful, or what their rating was, and they gave a very  
10 poor rating.

11 Now I come back and I see where they're saying  
12 that they have established a partnership with Akin, Young and  
13 Taub, I believe I have this correct, but anyway, dealing with  
14 Capitol Square. At that time, they stated that Capitol Square  
15 was not a susceptible site dealing with the DOES and the LBOC's.

16 So, I guess I would say this about that. We need  
17 some type of -- I don't know if I can -- Mr. Bergstein, you can  
18 correct me if I'm incorrect and I cannot ask for this, but I  
19 think we need some type of reporting measures with making sure  
20 that this stuff actually happens.

21 I also have a problem, not just relating to the  
22 Applicant, and this is why I want to make sure that we have some  
23 kind of meeting with all parties involved. The Applicant has  
24 already made an attempt, he states in his letter, that he has  
25 spoke with DOES, and DOES has not responded back in a timely

1 manner.

2 Another thing, the LBOC, they're saying they have  
3 nothing in place. I can tell you that I have spoken to everyone  
4 except for DOES. I've spoken to Ms. Flowers of LBOC. She has  
5 informed me that she gets nothing from Zoning. Then I'm hearing  
6 something here that's contradictory, that they don't even have  
7 anything in place. That's why it's of the urgency that we put  
8 that meeting in place because I don't necessarily think we can  
9 just blame the Applicants.

10 Obviously, the District has some work to do from  
11 what I see here. This is a letter that I think needs to go to  
12 DOES, and also that needs to go to LBOC. So, if we can  
13 encourage that, I think that needs to happen, and hopefully that  
14 meeting can happen soon because I'm very disturbed with the  
15 findings that have come back dealing with that.

16 I also want to put in place, hopefully, some type  
17 of reporting measures whether it comes to the Office of Zoning  
18 or whether it goes to the Office of Planning or who, but we need  
19 to have some type of reporting measures.

20 Also, the LBOC, I was very disappointed in the  
21 District businesses. I think I see one on the whole page here  
22 dealing with 300 M Street. While I know that the District may  
23 not have all the necessities, what the Applicants are looking  
24 for, we still need to know up front so we can start putting  
25 things in place.

1                   So with that, Madame Chair, I will reserve my  
2                   comments, but in this particular case, the urgency right now, I  
3                   would think that we need to put some type of reporting mechanism  
4                   in place.

5                   CHAIRPERSON MITTEN:     Mr. Hood, you know, the  
6                   issues that you raise are good, and I really do appreciate you  
7                   reminding us of the importance of them. If I could just borrow  
8                   that letter back for a second. What's interesting, and I do  
9                   remember that folks from Akin, Young and Taub being honest with  
10                  us about their results, but I think it's a question of what  
11                  we're expecting of applicants. What the Applicant has said is  
12                  that they're in compliance with the good faith requirements for  
13                  their DOES and LSDBE goals.

14                  I think where the disconnect is is that there's a  
15                  good faith requirement to try, and then there's the results,  
16                  which are disappointing. So, it's a question of getting the  
17                  results, and I think we have some insight from this letter that  
18                  it would be difficult to hold the Applicants accountable for the  
19                  results given that they need to work through these District  
20                  agencies, and yet if we don't expect that we will get the  
21                  results, then what kind of an amenity is it if we can't rely on  
22                  it.

23                  So, I think there is the definite urgency to have  
24                  this meeting, and I guess what we could do, since we're asking  
25                  for a variety of other things, is ask the Applicant what they



1 might propose to do to guarantee or to insure that we will get  
2 the results that we expect from these agreements and ask them  
3 for some input about that.

4 MR. HOOD: That sounds good, Madame Chair.

5 CHAIRPERSON MITTEN: Are there any other concerns  
6 about the amenities that are being proffered?

7 MR. PARSONS: Well, I think the building is a  
8 superior architecture, but I want to reflect on the exchange I  
9 had with Mr. Cochran at the hearing because I think what the  
10 Office of Planning is saying is that the quality of matter-of-  
11 right architecture is increasing. They reference the Pelli  
12 building.

13 I don't know why I'm going to suggest this. We  
14 have been through this so many times, but whether superior  
15 architecture is an amenity or not. The last time we reviewed  
16 the PUD regulations, we came to the conclusion it was, as it had  
17 been for some 25 years.

18 If the Office of Planning is having a different  
19 view in C-4 areas about this, then maybe we ought to do  
20 something about it. I look at this as two buildings, mediocre  
21 buildings, being demolished, removed, and replaced with  
22 something very attractive, and they couldn't seem to get there.

23 They weren't questioning the quality of it. They were saying,  
24 but they're doing the same thing up the street. I guess I would  
25 say in not all cases are they doing the same thing up the

1 street.

2 So, I don't agree with them in this case. If  
3 they have some overall concern about this issue, we'd better  
4 deal with it now than case by case.

5 CHAIRPERSON MITTEN: I think, you know, what came  
6 out of the discussion, and I very much appreciated the  
7 discussion that was generated by the Office of Planning and  
8 struggling with the architecture because I think this has been  
9 characterized as the sort of Lake Woebegone characteristic which  
10 is all architecture is superior.

11 You know, how do we make that judgment, and if we  
12 can't, then we need to figure out a way to struggle with this in  
13 another way. You know, everybody who brings forward a project  
14 thinks it's superior architecture, especially when the architect  
15 testifies. So, I think it's something that we do need to  
16 revisit.

17 While I appreciate the fact that they are  
18 replacing two mediocre buildings, the test for the amenities has  
19 never been what they're replacing. It's always been -- the  
20 standard is relative to matter-of-right, so that somebody who  
21 has a grotesquely ugly building is doing everyone a favor by  
22 taking it down, that really doesn't necessarily qualify as an  
23 amenity.

24 For myself, I think that while the Applicant is  
25 asking for a relatively modest, in this case, relief, I am

1 struggling with and would welcome anything that the Applicant  
2 would want to supplement the record with as it relates to  
3 amenities. I find the amenities, particularly if the tax  
4 revenue calculation were done against a matter-of-right  
5 building, and given that we don't expect, at least in the short  
6 term, very good results on the LBOC and DOES, and given that  
7 there is some, you know, it's certainly open to debate whether  
8 or not this architecture is superior to what could be gained  
9 from a matter-of-right project, you know, there's not a whole  
10 lot left.

11 So, I think that the amenities are kind of thin.

12 I think there should be something that gives us the sense that  
13 this is not on the edge of meeting the requirement, that this  
14 definitely meets the requirement, and I don't feel that we're at  
15 that point. I don't know if anyone else shares that concern,  
16 but that's a concern of mine.

17 MR. PARSONS: Well, I would only say to that that  
18 this project is only achieving 38,000 square feet above -- not  
19 that that's small, but I mean, it isn't a couple of hundred  
20 square feet over a matter-of-right. So, I'd better stop. I  
21 would welcome whatever the response you get.

22 CHAIRPERSON MITTEN: Well, just to respond to  
23 that briefly, not to belabor it, but it would be interesting --  
24 I don't have all the papers in front of me, but in examining for  
25 us the issue of the housing linkage payment, the Office of

1 Planning did calculate the -- at least from using the tax  
2 assessment -- what the incremental value of the zoning is.

3 So, if we go back to that and we say okay, well  
4 what is that, and I don't remember what the number is, but it's  
5 a hefty number, and then say okay, well have we sufficiently  
6 balanced that with amenities. I guess that's what I'm trying to  
7 suggest would be an appropriate exercise to go through for the  
8 Commission. When I do that balancing, I don't find that I'm  
9 sufficiently persuaded that the balance has been achieved.

10 Any other thoughts about amenities, benefits?

11 MR. MAY: No. Having heard what both of my  
12 fellow Commissioners have to say on this subject, I would agree.

13 I mean, there is certain question with regard to the relative  
14 amenity of simply superior architecture. I mean, I would think  
15 that certainly for this type of building, there is reward in and  
16 of itself to the Applicant by simply having a better building.  
17 You know, yet there is a benefit as well to the larger community  
18 by having that building.

19 The superior architecture of a gas station isn't  
20 going to sell you more gas, but the superior architecture of an  
21 office building will theoretically yield higher rents, other  
22 conditions notwithstanding. It becomes, I guess in this  
23 particular environment, the value of that amenity becomes  
24 particularly hard to judge.

25 CHAIRPERSON MITTEN: True, but your point is well

1 taken, which is I think it explains why matter-of-right  
2 development exhibits a high level of architecture as well is  
3 because it does make sense. it is desirable to do from an  
4 economic perspective. So, we'll have to struggle with all of  
5 that.

6 Now, those were all the issues that I had, sort  
7 of issues within the context of the application itself. Given  
8 that we're going to give the Applicant the opportunity to  
9 supplement the record in a variety of ways, are there any other  
10 issues that any of the Commissioners would like to raise?

11 MR. HOOD: I just have a point of clarification.  
12 With all this and the way the amenity package and the  
13 discussion has went, are we going to be still doing proposed  
14 action, or are we going to defer that?

15 CHAIRPERSON MITTEN: I would like to defer it,  
16 and I would like there to be some movement that would give me  
17 comfort to go forward, so I'd rather not take action today and  
18 reopen the record.

19 MR. HOOD: I would agree, Madame Chair, because  
20 the discussion I just heard, it's almost like we're starting --  
21 I don't know whether they have an amenities package or not, to  
22 be frankly honest, but hopefully we'll give them an opportunity  
23 to be able to respond to the issues.

24 CHAIRPERSON MITTEN: Mr. Bastida, could you give  
25 us some guidance about when the additional submissions that we

1 have asked for could be provided, and also to give time, because  
2 I think we'd like to get some feedback from the Office of  
3 Planning. Doesn't the ANC get an opportunity to weigh in on  
4 these things?

5 MR. BASTIDA: All the parties that participated  
6 in the public hearing should be served and then receive comments  
7 from those parties. I am getting my calendar, but I think that  
8 basically, there are only three weeks to do these, to the  
9 hearing. So, I would like to solicit from the Applicant to see  
10 how soon they can provide what the Commission has requested, and  
11 we can enumerate -- I believe there are five points -- and see  
12 when they can serve it to the other parties. That way, the  
13 other parties have the opportunity to respond to it and be able  
14 to have it for the Zoning Commission meeting of December 10.

15 If the Applicant will be kind enough to approach  
16 me and let me know, I would be very appreciate because then I  
17 can make a determination for you to see if you concur with it.

18 CHAIRPERSON MITTEN: Okay. Should we wait while  
19 you do that, or should we go to the next case?

20 MR. BASTIDA: You can go to the next case if you  
21 would like. That way, you wouldn't waste any other time.  
22 That's a sua sponte case, and I only would have to say that you  
23 have been provided with a record in the case and with the letter  
24 that was sent out of this office requesting preliminary  
25 comments. The comments were received by this office.

1 Thank you.

2 CHAIRPERSON MITTEN: Thank you. All right. Just  
3 as we proceed, there's a couple of things that I just want to  
4 address, which is that on the sua sponte case. We have a motion  
5 to strike portions of the responses, and I guess in general, I'd  
6 just like to say that I'm not sure that the motion is even -- is  
7 the motion properly before us in this proceeding, Mr. Bergstein?

8 MR. BERGSTEIN: I would say that it's not.  
9 There's only one instance where the parties become involved in  
10 the sua sponte, and that's only if the Commission intends to  
11 reverse or modify the order. In this case, it asked for some  
12 comments from the parties, and to the extent it received them,  
13 it can use them, but I don't think it's appropriate to deal with  
14 any motion by any particular party in a sua sponte.

15 CHAIRPERSON MITTEN: Okay. Maybe just for  
16 clarification. I mean, I think we know what's before us, and  
17 anything that we receive that's extraneous to that, we would  
18 ignore as a matter of course anyway. Is that the feeling of the  
19 other Commissioners? Okay.

20 Now, we have a submission from Shaw Pittman on  
21 behalf of the property owner that shows an alternative plan for  
22 the penthouse configuration that would alleviate my concern  
23 about the approval that was given by the zoning administrator  
24 regarding the penthouse. This is their November 9, 2001  
25 submission.

1           What I would like to do is encourage them to  
2 submit it and be on their way, but I'd also like to take some  
3 action, and I think it's appropriate to take some action as it  
4 relates to the BZA decision because unless we take some action,  
5 the BZA decision will stand. So, maybe the best way to begin is  
6 to find out if the other Commissioners share my concern about  
7 the treatment of the penthouse in this case and if it requires -  
8 - if you need me to explain it, either all or part of it, I'd be  
9 happy to do that if it's necessary.

10           For now, I'll just ask if anyone has any thoughts  
11 and whether or not I've been persuasive about my concerns. Mr.  
12 May?

13           MR. MAY: Can you walk us through this October  
14 19? What I don't have before me is drawings of the approved  
15 version. So, what is the difference here?

16           CHAIRPERSON MITTEN: Okay, we're on the roof plan  
17 comparison.

18           MR. MAY: Oh, all right.

19           CHAIRPERSON MITTEN: I think the roof plan  
20 comparison illustrates it better for me, anyway, for me  
21 personally. You see on the lower portion where it says previous  
22 partial elevation looking west. The tallest portion of that  
23 elevation is a tower with a peaked roof on it, and it looks  
24 striped. Then in the upper elevation, you see that that's been  
25 removed.



1 Well, that tower is at the building line, and it  
2 was treated for purposes of calculating FAR, it was given the  
3 FAR exclusion of the .37 FAR exclusion as a penthouse, but the  
4 zoning administrator treated it as an architectural  
5 embellishment and said for the alternative purpose of setting it  
6 back, which is also a requirement for penthouses, that it didn't  
7 have to be set back because it was in this architectural  
8 embellishment.

9 My concern was it's either a penthouse or it's  
10 not a penthouse. It can't be a penthouse for one purpose in the  
11 ordinance and not a penthouse for another. So, it either gets  
12 the exclusion and is treated as a penthouse and set back, or it  
13 doesn't get the exclusion, and it's counted in FAR.

14 So, what the Applicant has done here is basically  
15 eliminated the tower and reduced the height of the penthouse to  
16 the point where a set back isn't required in terms of what's  
17 been solve, but in terms of my concern, my concern was the idea  
18 that the penthouse was being treated in two different ways.

19 I guess my biggest concern is that there's a  
20 pattern of this kind of decision making. What it does is it  
21 creates bulkier buildings than was anticipated because the FAR  
22 exclusion for penthouses is permitted because we don't expect  
23 them to be up against the face of the building.

24 MR. PARSONS: Well, now go to the next sheet  
25 because that's the one I'm struggling with. There seems to be

1 no elevator override on this elevator. What is it?

2 CHAIRPERSON MITTEN: Well, one of the things that  
3 was talked about, and I don't know exactly about this design,  
4 but somebody had raised the issues in the original hearing about  
5 how the penthouse wasn't even tall enough, and there's some kind  
6 of -- you know how some have the hoist at the top or have the  
7 mechanics at the top. Well, this is somehow on the side so that  
8 everything doesn't have to be on top of the elevator shaft.

9 MR. PARSONS: Oh, so it doesn't need a penthouse.  
10 It's got a three or four-foot override in the second drawing.  
11 The first one doesn't show any override at all. It just comes  
12 up to the floor. It's a very unusual elevator.

13 CHAIRPERSON MITTEN: I think it is.

14 MR. PARSONS: It must be a hydraulic elevator or  
15 something that pushes from the bottom. I have no idea, but if  
16 they can do it, they can do it.

17 CHAIRPERSON MITTEN: Mr. May?

18 MR. PARSONS: Mr. May to the rescue.

19 CHAIRPERSON MITTEN: Educate us, please.

20 MR. MAY: It's hard to tell because the drawing  
21 with the dimensions is so small. There is a requirement for  
22 some override no matter how the elevator is run. You have to  
23 always be able to stand on top of the elevator cab so that no  
24 one is injured in the process of working on the elevator, but it  
25 is possible to remove the machinery and take the machinery and

1 move it to the side of the shaft at a lower elevation or, I  
2 mean, it can be put somewhere else adjacent to the shaft without  
3 being at the very top.

4 The most efficient thing is to do it at the top,  
5 but it can be done essentially from the bottom. We don't have  
6 details on where it's run from, nor do we have details on  
7 whether, in fact, they have sufficient override space. I would  
8 assume that being responsible designers, that they would have  
9 incorporated that.

10 MR. PARSONS: So, did the past drawing then show  
11 in this tower a full 18-1/2 foot override?

12 CHAIRPERSON MITTEN: We didn't have the  
13 equivalent of Section BB in the record.

14 MR. PARSONS: Oh, well I think your advice for  
15 them to go on their way with this is a good one, is good advice.

16 CHAIRPERSON MITTEN: Given that I think we need  
17 to take some action relative to the BZA decision, and given that  
18 I don't think it's appropriate to take it -- I think we have to  
19 give the parties a chance to respond. I would like, if we  
20 could, to indicate what our intent is relative to the BZA  
21 decision. So, if I can get a sense of whether or not the  
22 concerns that I had regarding the penthouse and the setback are  
23 shared by other members of the Commission, I think that would be  
24 helpful.

25 MR. PARSONS: Yes.

1 MR. MAY: Yes.

2 MR. HOOD: Fine.

3 CHAIRPERSON MITTEN: Okay, then this is what I  
4 would propose. We have a consensus that the BZA decision as it  
5 relates to the treatment of the penthouse and the required  
6 setback, was incorrect. So, the action would be to reverse  
7 their decision on that basis.

8 At the same time, we would encourage the  
9 Applicant, or we would encourage the owner to submit an  
10 application consistent with what's been presented here, and if  
11 that were made, the matter would be moot relative to any action  
12 we would take, vis-a-vis the BZA. We would also just expect  
13 that the zoning administrator, when that curative permit  
14 application were received, that they would make the referral to  
15 the Office of Planning with the understanding that if there's no  
16 response from the Office of Planning within, I think they have  
17 to wait 15 days, that they would be free to proceed.

18 I'd also like to say just if it is of any  
19 concern, I think that this a minor modification of the plan that  
20 was proposed and in no way should jeopardize the zoning that's  
21 vested for this project.

22 MR. HOOD: Madame Chair, I would agree with you.

23 I think it's definitely a minor modification. I just have one  
24 question for clarification. We're overturning what the BZA did.

25 Are we just taking that section in the order or the whole

1 order?

2 CHAIRPERSON MITTEN: No, we're only considering  
3 the two decisions on the sua sponte which relate to the setback  
4 of the penthouse and the lack of a referral to the Office of  
5 Planning of the roof design by the zoning administrator.

6 MR. HOOD: And then once that's submitted and  
7 corrected, then they can be on their way.

8 CHAIRPERSON MITTEN: They can be on their way  
9 now. I mean, I think what will happen is if the Applicant  
10 submits -- if the owner submits an application for this curative  
11 permit, that whatever happens relative to the BZA decision is of  
12 no interest to them anymore, because it's only on these two  
13 issues. This application, the revised design, moots the issue  
14 before the BZA.

15 MR. HOOD: Okay, so where are we now? Do we need  
16 a motion?

17 CHAIRPERSON MITTEN: I think that what we need to  
18 do is, we've indicated our consensus, and I think either Mr.  
19 Bergstein or Mr. Bastida can tell us what happens next relative  
20 to the parties.

21 MR. BASTIDA: Now, the Office of Zoning will send  
22 a letter out requesting comments from the parties regarding your  
23 decision to reverse in a narrow fashion the BZA on those points.

24 The Office of Zoning will send out the letter this week and  
25 would request that the comments will be served by 12:00 noon on

1 Monday, December 3, and staff would like to make clear that they  
2 are not comments to the comments.

3 The sua sponte doesn't allow for that. it's only  
4 your comments, and there is no response to the comments. So,  
5 each party will serve each other just so they are aware of what  
6 it was submitted for the record.

7 CHAIRPERSON MITTEN: Okay, can I just make one  
8 clarification, and Mr. Bergstein should weigh in here if we need  
9 to proceed in a different way. We did not make a decision.  
10 We've indicated our consensus.

11 MR. BASTIDA: Right, that's all right.

12 MR. BERGSTEIN: Well, that's right. Basically  
13 the letter would say, and we have a model that was used before  
14 that at the hearing the Zoning Commission has at least indicated  
15 the likelihood that it would reverse and modify. Prior to doing  
16 that, the Zoning Commission will receive memorandum from the  
17 parties in accordance with 3128.3, or something like that.

18 CHAIRPERSON MITTEN: Thank you. Does the zoning  
19 administrator get brought into this at some point?

20 MR. BERGSTEIN: He's a party.

21 CHAIRPERSON MITTEN: Okay. Oh, that's right.

22 MR. BERGSTEIN: He's a party.

23 CHAIRPERSON MITTEN: Sorry, yes, that's right.

24 Great, thank you.

25 MR. BASTIDA: Okay, thank you.

1 CHAIRPERSON MITTEN: Okay. Could you turn on  
2 your mike there for a second?

3 MR. BASTIDA: I was too quick, and I turn it on  
4 and off. Would you like to discuss the time tables for 1700?

5 CHAIRPERSON MITTEN: Yes, please.

6 MR. BASTIDA: The Applicant will make its  
7 submission on Tuesday, November 27 by 12:00 noon, and will serve  
8 it on all their parties. The parties have until Tuesday,  
9 December 4 at 12:00 noon to respond to that submission.

10 CHAIRPERSON MITTEN: Okay.

11 MR. BASTIDA: Thank you.

12 CHAIRPERSON MITTEN: Thank you. Let's move to  
13 final action, Zoning Commission Case No. 01-12C, the PUD for  
14 Nehemiah Homes. Mr. Bastida?

15 MR. BASTIDA: Yes, Madame Chairman. The staff  
16 has provided you with all the documents and with a proposed  
17 draft order, and request action on this item. Thank you.

18 CHAIRPERSON MITTEN: We have a request for final  
19 action on Zoning Commission Case No. 01-12C. I would move  
20 approval of the Zoning Commission order, which is lacking a  
21 number, in Case No. 01-12C.

22 MR. HOOD: Second.

23 CHAIRPERSON MITTEN: Any discussion?

24 MR. PARSONS: Madame Chair, I wanted to go to --  
25 I should have noticed this earlier. I apologize. On page four

1 in the order, at number 14, they're talking about this situation  
2 where the original application and a bioretention system  
3 underneath the recreation area under the jurisdiction of the  
4 District. The way it's stated here in line 5, however, after  
5 the PUD set down, the NPS advised the Applicant that a deed  
6 executed in 1957 indicated that this area was owned by D.C. --  
7 it's not quite accurate.

8 CHAIRPERSON MITTEN: Okay.

9 MR. PARSONS: So, I'd like to change it. Started  
10 in 1957, indicated that this, federal land, was transferred to  
11 the District of Columbia, and I've got this written down here --  
12 parks for recreation purposes, which does not permit other uses.  
13 That's basically it.

14 CHAIRPERSON MITTEN: Okay.

15 MR. PARSONS: And we would take out but that  
16 jurisdiction over its use belonged to the NPS. I would just  
17 hand that to Mr. Bastida.

18 CHAIRPERSON MITTEN: Terrific.

19 MR. PARSONS: To clarify that.

20 CHAIRPERSON MITTEN: Okay.

21 MR. PARSONS: Thank you.

22 CHAIRPERSON MITTEN: Anything else, anybody?

23 MR. HOOD: Madame Chair, can we also, and I'm  
24 seconding before I look -- on page 8 and 9, again, I'm going to  
25 ask that we have some type of reporting mechanism put in place.



1 I believe I'm thinking back to the hearing. I believe that  
2 they really provided good information on how they were going to  
3 proceed, but I also want to make sure that we put -- since we're  
4 doing it with all of them, I want to make sure that we put some  
5 kind of reporting mechanism in place. I don't really have the  
6 language to put in there. If we can do it.

7 CHAIRPERSON MITTEN: Well, as it's been done in  
8 the past, and not to say -- and the past is leaving us  
9 dissatisfied, but the requirement has been to enter into these  
10 agreements, and we haven't held the Applicants accountable for  
11 their results. I think until we understand better about how the  
12 process works, I'm not even sure that we can hold them  
13 accountable for the results.

14 MR. HOOD: That's fine.

15 CHAIRPERSON MITTEN: Because if they're going to  
16 report, who will they report to, and what will happen as a  
17 consequence of the reporting at the moment? What would we like  
18 to see happen, because if, for instance, they're supposed to  
19 hire -- their target is to hire a certain percentage of local,  
20 small disadvantaged business, and they don't meet the target.

21 Then what is the PUD, not valid, or are we going  
22 to penalize them in some way? See, that's what I think we need,  
23 more discussion to get to that point. I think we'd like to get  
24 to that point, but I'm not sure we can put that in place just  
25 yet.

1 MR. HOOD: But at least we would know that it was  
2 done. I can't remember the file, but I don't know if they had  
3 an agreement in the file or not. They may have, may have not,  
4 but at least we know something was attempted, whether they had a  
5 signed agreement or not.

6 CHAIRPERSON MITTEN: Okay.

7 MR. HOOD: But for right now, I'd just make that  
8 issue mute.

9 CHAIRPERSON MITTEN: What we could do is if  
10 you're looking to gain information about results, the success,  
11 without any penalty being associated with it, we can certainly  
12 say, or can we say, Mr. Bergstein, that the Applicant shall, at  
13 the conclusion or the project or at the conclusion of  
14 construction, deliver a report to the Zoning Commission  
15 regarding their success in complying with the requirements or  
16 something like that?

17 MR. BERGSTEIN: Well, I think you could say for  
18 information purposes so it's clear why you're asking it.

19 CHAIRPERSON MITTEN: Yes, yes.

20 MR. BERGSTEIN: That they shall report to the  
21 Zoning Commission the date upon which the MOU's and first source  
22 agreements are entered into so you would know that they occurred  
23 and how soon they occurred.

24 Then, with respect to the DOES that concerns the  
25 construction of the PUD, you could ask them at the conclusion of

1 construction to indicate what percentage of persons were  
2 actually used so you can see just what the result is.

3 CHAIRPERSON MITTEN: Okay.

4 MR. BERGSTEIN: The same thing, I understand that  
5 the second one is sort of an ongoing thing that there's a  
6 requirement that a certain number of disadvantaged businesses  
7 take part in the PUD, but again, you can ask them for at least a  
8 report -- I don't know if you want it on an annual basis or a  
9 one-time report, just to fix it so you'd have a sense of the  
10 percentage.

11 So, at least you then get a statistical basis to  
12 judge whether or not these things work and whether or not in the  
13 future you may need to impose certain conditions. So, if you  
14 stated for informational purposes only, something like that.

15 CHAIRPERSON MITTEN: Okay.

16 MR. HOOD: Let me just say this, though, Madame  
17 Chair. I'm not saying that the Applicant is always at fault  
18 because as evidence has already shown us, it's not just the  
19 Applicant. When we have these meetings, I want to take this  
20 data to the table and say hey, look, either we're going to do  
21 this, or either we need to just do away with it in the  
22 regulations.

23 CHAIRPERSON MITTEN: I agree. I agree  
24 completely.

25 MR. HOOD: I'm not just necessarily just pointing

1 at the Applicant.

2 CHAIRPERSON MITTEN: I agree.

3 MR. HOOD: I want to see how responsive the  
4 District agencies are also. So, that's just where I am. I want  
5 to put that on the record and make sure the Applicants know it's  
6 not just them. It's a two-sided equation here.

7 CHAIRPERSON MITTEN: Well, actually, the thing  
8 is, it's not really about placing blame. It's about trying to  
9 figure out are we getting the results that we expect when we  
10 accept this as an amenity, and if not, can we get the results  
11 that we expect, and if we can't then we, like we say, we should  
12 stop accepting it. So, could we add that language, Mr.  
13 Bergstein, as you suggested, for information purposes? You can  
14 craft something.

15 MR. BERGSTEIN: Yes, and if you don't mind also,  
16 work with the Applicant to make sure that what I'm saying is  
17 something that's understood and doable.

18 CHAIRPERSON MITTEN: Okay, and I would suggest  
19 that at least at this point that the reporting on both the DOES  
20 and the LBOC agreements be one-time reports at the conclusion of  
21 construction because I don't want them to have an ongoing  
22 reporting requirement.

23 MR. BERGSTEIN: I see, so at the conclusion of  
24 construction, they'll advise you the date the memorandums were  
25 entered, and then at the conclusion of construction to what

1 extent that the MOU's reach the desired goal.

2 CHAIRPERSON MITTEN: Yes.

3 MR. BERGSTEIN: Okay.

4 CHAIRPERSON MITTEN: Thank you.

5 MR. BASTIDA: Madame Chairman?

6 CHAIRPERSON MITTEN: Yes.

7 MR. BASTIDA: Then you will leave the record open  
8 to receive that at the conclusion of the construction phase?

9 CHAIRPERSON MITTEN: No.

10 MR. BERGSTEIN: I think that this is just an  
11 informational report.

12 CHAIRPERSON MITTEN: It's for information  
13 purposes.

14 MR. BASTIDA: But that was one of the problems  
15 that was before is that then it went into general correspondence  
16 file. If you are going to make it part of the -- to really be  
17 able to go to the specific project and obtain the data, I think  
18 that it should go into that file. In that way, it will be easy  
19 to retrieve.

20 MR. BERGSTEIN: Maybe I could suggest something,  
21 though. Is there a way of creating a file for this statistical  
22 information? In other words, if this is something you'd like to  
23 know, not just for this PUD but for every PUD in the next few  
24 months or whatever, then perhaps the best thing to do is to  
25 create a file for the purpose of receiving these reports.

1 CHAIRPERSON MITTEN: Yes.

2 MR. BERGSTEIN: Then you could do something with  
3 the statistics because if they're in each separate file, then  
4 you have to remember which ones you asked that for and then sort  
5 of put it all together.

6 CHAIRPERSON MITTEN: Right.

7 MR. BASTIDA: Staff can do that.

8 CHAIRPERSON MITTEN: Terrific.

9 MR. BASTIDA: Thank you.

10 CHAIRPERSON MITTEN: Okay. We have a motion and  
11 a second to take final action to approve Zoning Commission Case  
12 No. 01-12C with modifications proposed to Finding of Fact No. 14  
13 by Mr. Parsons and with modifications to conclusions of law, or  
14 the decision -- sorry -- Decision No. 8 and No. 9 by Mr. Hood.

15 Any further discussion? All those in favor,  
16 please say aye.

17 (Chorus of ayes.)

18 CHAIRPERSON MITTEN: Those opposed, please say  
19 no.

20 (No response.)

21 CHAIRPERSON MITTEN: Mr. Bastida?

22 MR. BASTIDA: The staff will record the vote of  
23 four to zero, Ms. Mitten moving and Mr. Hood seconding, Mr. May  
24 and Mr. Parsons voting on the affirmative, Mr. Hannahan not  
25 present, not voting. Thank you.

1 CHAIRPERSON MITTEN: Okay. Consent calendar.

2 MR. BASTIDA: The consent calendar is basically  
3 an item in which we were doing editorial comments that are  
4 really base of no consequence for the rulemaking, but if  
5 required because of law, the changes are basically on page seven  
6 under E on electronic equipment facility. What we did here was  
7 to bring this in line with Section 21.0.4 of the parking  
8 requirements. In that way, they would read in tandem. So,  
9 there is nothing really new what is being proposed here but the  
10 language has been modified to read as what is presently in the  
11 regulations in Chapter 21, that is parking.

12 CHAIRPERSON MITTEN: Okay. I had a couple of  
13 just minor things. Let's just run through them quick. On page  
14 seven, in the bolded language in the first paragraph under  
15 number of parking spaces required, second to the last line, if  
16 the structure is vacant, comma, the use that existed immediately  
17 prior to the vacancy.

18 MR. BASTIDA: Provided the number of parking  
19 spaces?

20 CHAIRPERSON MITTEN: No.

21 MR. BASTIDA: I lost you.

22 CHAIRPERSON MITTEN: Okay. See where it starts,  
23 for EEf use in existing structure?

24 MR. BASTIDA: Correct.

25 CHAIRPERSON MITTEN: Down at the end of that

1 sentence, if the structure is vacant, comma, the use that  
2 existed.

3 MR. BASTIDA: Okay.

4 CHAIRPERSON MITTEN: Then in the next paragraph  
5 at the end, the bolded language, by this title for the  
6 succeeding use.

7 MR. BASTIDA: Yes.

8 CHAIRPERSON MITTEN: And then on page eight, the  
9 change that you're proposing to make to CR and put a hyphen in  
10 it is not correct. CR is not hyphenated.

11 MR. BASTIDA: Thank you.

12 CHAIRPERSON MITTEN: Okay, so I would move  
13 approval of the -- what's it called? We don't have an order  
14 number here? Okay, the notice of --

15 MR. BASTIDA: This is a proposed rulemaking, so  
16 we will have to send them out for comments and wait 30 days, so  
17 probably we will not have a final action until the January  
18 meeting.

19 CHAIRPERSON MITTEN: Okay.

20 MR. BASTIDA: We have to go that route.

21 CHAIRPERSON MITTEN: Okay, so this is a  
22 modification to a proposed order? Is that what you're saying?

23 MR. BASTIDA: Correct. No, to an existing order.

24 CHAIRPERSON MITTEN: But you said this is --

25 MR. BASTIDA: A proposed rulemaking.



1 MR. BERGSTEIN: Sorry, this is a proposed  
2 rulemaking that has such minor changes that you don't need to do  
3 the normal hearing procedure, which is what the consent calendar  
4 is for.

5 CHAIRPERSON MITTEN: Okay.

6 MR. BERGSTEIN: So, you're as if you have already  
7 had a hearing and the whole shebang, and now you're just at the  
8 point of taking proposed action.

9 CHAIRPERSON MITTEN: Okay.

10 MR. BERGSTEIN: It's on consent calendar because  
11 there's been no proceeding hearing, and you need to use the  
12 consent calendar to be able to go directly to a proposed action  
13 without doing a hearing.

14 CHAIRPERSON MITTEN: Thank you. I was sort of  
15 just missing the nexus there.

16 Okay, so I would move approval of the proposed  
17 rulemaking in Zoning Commission Case No. 00-28TA with the  
18 amendments that I articulated.

19 MR. PARSONS: Second.

20 CHAIRPERSON MITTEN: We have a motion and a  
21 second. Is there any discussion?

22 MR. MAY: Yes. Given this is a recent rulemaking  
23 that I have not been part of.

24 CHAIRPERSON MITTEN: Okay.

25 MR. MAY: So, I should abstain from this,

1 correct?

2 MR. BERGSTEIN: No, you don't have to.

3 MR. BASTIDA: You don't have to.

4 MR. MAY: Okay.

5 CHAIRPERSON MITTEN: I think the idea is given  
6 that what exists as the ordinance without knowing all of the  
7 background, do you find that these amendments that are being  
8 proposed in terms of language modification are satisfactory?  
9 So, we would welcome your participation.

10 MR. MAY: Okay.

11 CHAIRPERSON MITTEN: All those in favor, please  
12 say aye.

13 (Chorus of ayes.)

14 CHAIRPERSON MITTEN: Those opposed, please say  
15 no.

16 (No response.)

17 CHAIRPERSON MITTEN: Mr. Bastida?

18 MR. BASTIDA: The staff will record the vote four  
19 to zero, Ms. Mitten moving and Mr. Parsons seconding, and Mr.  
20 Hood and Mr. May voting on the affirmative.

21 CHAIRPERSON MITTEN: All right.

22 MR. BASTIDA: Mr. Hannahan not present, not  
23 voting.

24 CHAIRPERSON MITTEN: Okay. I'd just like to  
25 acknowledge that we have received numerous pieces of

1 correspondence, and it all related to the emergency text  
2 amendment prohibiting concrete plants or requiring special  
3 exception consideration of concrete plants in certain areas of  
4 the city. Then, Mr. Bastida has provided us a reminder  
5 schedule, and we need to just adjourn to the back room to deal  
6 with some administrative things, so please no one leave  
7 precipitously.

8 Anything else, Mr. Bastida?

9 MR. BASTIDA: The staff has no further matters.

10 CHAIRPERSON MITTEN: Thank you.

11 MR. HOOD: Madame Chair, if we could get an  
12 update from Mr. Bastida on the meeting that he's in the process  
13 of getting going with the DOES. If he can just give us an  
14 update.

15 MR. BASTIDA: Yes, Mr. Hood. The staff has  
16 contacted the individuals in both departments, and they are  
17 willing to meet with the Commission. I have prepared a drafted  
18 agenda with the help of the chairman and will be contacting the  
19 individuals to meet with them, either here or at their offices,  
20 sometime in the first half of December.

21 I will be in touch with the Commissioners that  
22 expressed an interest in attending that meeting. So far, it has  
23 been Mr. Hood and Ms. Mitten. If Mr. May and Mr. Parsons are  
24 interested, I will try to accommodate everybody to attend the  
25 meeting. I might remind individuals that when you are trying to

1 put together a meeting and you have many participants, usually  
2 it is very difficult to set that meeting because of conflicts in  
3 calendars.

4 CHAIRPERSON MITTEN: Well, we know that you are  
5 up to the task, Mr. Bastida.

6 MR. HOOD: Thank you, Mr. Bastida, for getting  
7 that meeting going because I have something else I would like to  
8 harp on as soon as we get this finished.

9 CHAIRPERSON MITTEN: If there is no other  
10 business before the Commission, this meeting is adjourned.

11 (Whereupon, the above-referenced matter was  
12 conclude at 4:17 p.m.)  
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